

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Award Simplification Decision

DECEMBER 1997

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996 and
Workplace Relations and Other Legislation Amendment Act 1996*

application under s.113 of the *Workplace Relations Act 1996*
and Item 49 of Schedule 5 of the *Workplace Relations
and Other Legislation Amendment Act 1996*

Australian Hotels Association

(C No. 90061 of 1997)

**THE HOSPITALITY INDUSTRY - ACCOMMODATION,
HOTELS, RESORTS AND GAMING AWARD 1995**

(ODN C No. 02782 of 1986)

[Print M7207 [H0008]]

Liquor and accommodation employees

Liquor and accommodation industry

JUSTICE GIUDICE, PRESIDENT

VICE PRESIDENT ROSS

VICE PRESIDENT McINTYRE

SENIOR DEPUTY PRESIDENT MACBEAN

COMMISSIONER McDONALD

MELBOURNE, 23 DECEMBER 1997

DECISION

INTRODUCTION

This decision is about allowable award matters and related issues. These matters and issues arise, in particular, under s.89A of the *Workplace Relations Act 1996* (the WR Act) and Items 46 to 54 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* (the WROLA Act). We set out the relevant provisions in Attachment A.

Before us is an application by the Australian Hotels Association (the AHA) to vary The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995 (the Hospitality Award or, the award) to give effect to the relevant statutory provisions. The Hospitality Award is binding on, among others, the AHA and the Australian Liquor, Hospitality and Miscellaneous Workers Union (the LTU).

The AHA's application was filed on 28 February 1997 and was listed, along with a number of similar applications, before a differently constituted Full Bench on 22 April, 26 June, 23 July and 26 August 1997. In a statement made on 1 September 1997, that Full Bench said:

"With respect to The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995 (Hospitality Award), we are satisfied -

(a) that the applicant, Australian Hotels Association, has made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters; and

(b) that there is no likelihood that, within a reasonable period, conciliation, or further conciliation, will result in agreement, or further agreement, by the parties.

Accordingly, the Full Bench proposes to deal with this application by arbitration. The application will be listed for programming and directions before the Acting President in Sydney at 10 a.m. on Monday next, 8 September 1997." [Print P4530 at 4]

Following the listing on 8 September 1997, the application was heard by the present Full Bench on 15, 16, 22, 24, 29 and 30 October and 3, 5, 6, 7 and 17 November 1997.

The AHA and the Australian Chamber of Commerce and Industry (the employers) asked us to conduct a thorough review of the Hospitality Award pursuant to Items 49(1), (7) and (8) of Schedule 5 to the WROLA Act. The employers submitted that in addition to these Items the following provisions in particular of the WR Act were relevant to that task:

- o the list of allowable award matters: s.89A(2);
- o numbers and proportions of employees of a particular type: s.89A(4)(a);
- o hours of work for regular part-time employees: s.89A(4)(b) and (5);
- o matters which are incidental to allowable award matters and necessary for the effective operation of the award: s.89A(6);

- o right of entry: s.3(b) and (f) and s.127AA;
- o preference: s.94, s.298K and s.298L; and
- o enterprise flexibility provisions: s.113B.

For the most part the Joint Governments (the Commonwealth, the Territories and all States except New South Wales) supported the employers' approach and the differences between them are not of sufficient significance to be dealt with here. Before turning to the question of whether to review the Hospitality Award, it is desirable to set out in summary form the principal submissions of the LTU. The Australian Council of Trade Unions (ACTU), although not appearing for its affiliates generally, supported these submissions.

CONSIDERATION OF LTU SUBMISSIONS

The LTU submitted that, in considering the application, the Commission should be guided by the principal objects of the WR Act (s.3), the objects of Part VI of it (s.88A) and the requirement that the Commission must ensure that a safety net of fair minimum wages and conditions is established and maintained (s.88B (2)). In that context, it was further submitted that the safety net should not be compromised by the WR Act's emphasis on agreement making. We agree with this submission, although its application in particular cases may raise questions of judgment which can only be answered by a consideration of the surrounding facts.

The LTU devoted a significant part of its submissions to a defence of its role as a union. It was supported in this by the State of New South Wales and the ACTU. This part of its submissions was responsive to submissions by the employers and the Joint Governments that, because of the general scheme of the WR Act and in particular s.89A(2), the Commission should not make provision for union representation. As will be apparent from the manner in which we deal with the relevant clauses in the Hospitality Award, it is our view that a role for unions may be included in awards consistent with s.89A. We reject any suggestion that this section deprives the Commission of the power to make provision for, say, a disputes settling procedure which involves a union.

In relation to several employer proposals to alter test case provisions, the LTU argued that test case standards should not be altered except in proceedings involving a wider range of parties and a greater depth of debate than in this case. In looking at test case provisions, it has only been necessary in this case to be concerned with two matters:

- o the need to confine the provisions to allowable award matters and those coming within s.89A(6); and
- o the requirements of Items 49(7) and (8).

We have not altered entitlements contained in test case provisions other than where provisions are not allowable. We did not understand the Joint Governments or the employers to submit that we should review such entitlements. We have, however, significantly altered some provisions in light of Items 49(7) and (8). The LTU made detailed submissions concerning the interpretation to be given to Items 49(7) and (8). In summary, it asked us to accept that:

- o existing award provisions were fair and that they should only be altered after a close examination of their history and use;
- o where more flexibility is sought by employers, the Commission should examine what use has been made of the flexibility already available;
- o existing rights and protections should not lightly be set aside; and
- o in relation to efficiency and productivity changes, the Commission should only act on proper evidence.

We accept the thrust of these submissions. We also point out that the Commission's task under Item 49 must be carried out in a practical way. Arbitral proceedings, where they are necessary, will focus on the essential issues in contention. With the guidance given by this case, and others which are likely to be decided in the first half of next year, we expect that most arbitrated cases would be relatively short. Later in this decision we give some general guidance in relation to the operation of Items 49(7) and (8).

The LTU submitted that we should take the nature of the industry into account where it is relevant in considering the employers' proposals for change. There was a significant amount of witness evidence, most of it unchallenged, which illustrated some characteristics of the industry covered by the Hospitality Award. The evidence shows, for example, that:

- 56% of the employees are women, with the percentage ranging from 67% to 82% in semi-skilled and unskilled classifications;
- 47% of employees are casuals, by far the highest proportion in any industry, and only one-third of the work force works 35 hours per week or more; and
- 40% of employees are aged between 15 and 24 years.

The LTU asked us to conclude, based on the evidence, that women, particularly from non-English speaking backgrounds, have difficulty in negotiating with management. Because women are in an unequal bargaining position they are at a disadvantage if conditions can be altered by individual agreement without Commission supervision. We agree with the proposition that we should take the nature of the industry into account when considering proposals to vary existing award provisions. We have taken the evidence and submissions into account in looking at each of the relevant employer proposals.

The LTU also submitted that workers want the flexibility to accommodate their working time to their family interests in relation to hours of duty, predictability of hours and annual leave. If award provisions are made subject to alteration by agreement with individual employees, the needs of the individual workers will be subordinated to the employer's needs. So, it was submitted, where the operation of award provisions is made subject to agreement, the consent of a majority of employees should be required.

We have considered the possibility that the needs of some employees may be unfairly jeopardized if provisions are subject to alteration by agreement with individual employees. It is not clear, however, that in most cases the needs of particular employees are more likely to be accommodated because the consent of a majority of employees is required. Another matter of significance is the nature of the benefit or entitlement in question. Some award requirements are more amenable to alteration by individual agreement than others. We have taken the LTU's submissions into account in framing our decision.

There is one other matter which requires consideration at this point. It was submitted by the State of New South Wales, supported by the LTU, that there is no urgent need to review awards pursuant to Items 49(7) and (8) because there will be no automatic invalidation on 1 July 1998 of award provisions which do not comply with these Items. Whilst this submission is technically correct, there is a strong argument of convenience in favour of dealing with Items 49(7) and (8) matters at the same time as the award is being reviewed pursuant to Item 49(1). The prospect of two reviews instead of one would only be entertained in compelling circumstances.

APPROACH TO THE CONSTRUCTION OF SECTION 89A

In construing the list of allowable award matters contained in s.89A we have adopted the approach taken by the Full Bench in the *Commonwealth Bank of Australia Officers Award Case (CBAOA Case)*:

"The list of allowable award matters is comprised of concepts of particular kinds of award benefits and conditions of employment. The construction of Section 89A(2) demands that each concept be given a meaning consistent with the use of the concepts in industrial relations practice in Australia. In its context, section 89A is not a provision for which there is a need for either a restrictive or a generous construction. The terms in it are to be given their ordinary meaning in regard to industrial relations usage. Most of the allowable award matters listed are industrial concepts formulated around entitlements and conditions of employment ubiquitously the subject of award provisions in State and Federal industrial jurisdictions. Even within the standard award concepts, the formulation of an award provision covering employment entitlements and conditions has long allowed room for craft and drafting skills. Conceivably, some conditions of employment could be formulated in sufficiently various ways to bring the conditions within one, another, or more than one of the allowable award matters. The categories of allowable award matters are not mutually exclusive. However it is generally the case that established award provisions are of a sufficiently standard content and form to be identifiable as coming within one or occasionally, more of the allowable award categories, or as not coming within the category at all." [(1997) 74 IR 446 at 458-9]

The LTU asked us to give a broad interpretation to the matters listed in s.89A(2). It relied upon the principle contained in the dictum of Dixon CJ in *Burton v. Honan* [(1952) 86 CLR 169 at 177] and pronouncements to the same effect in *D'Emden v. Pedder* [(1904) 1 CLR 91 at 109-110] and *George Hudson Limited v. Australian Timber Workers Union* [(1923) 32 CLR 413 at 423]. The principle was aptly summarised by Knox CJ in the last case in this way:

". . . the grant of a power carries with it the grant of all proper means not expressly prohibited to effectuate the power itself. . ."

We think that this principle is irrelevant to the construction of s.89A(2). In the first place, s.89A(2) does not contain a grant of power at all, but a limitation on power. Secondly, even if the principle applied, it cannot be used to broaden the scope of the power itself, but only to provide the means to carry it into effect. Each head of power in s.51 of the Constitution describes a category of laws which are within the competence of the Commonwealth Parliament to enact. By contrast, s.89A specifies particular subjects for award regulation. An example illustrates the distinction. The decision in *Burton v. Honan* [cited above] was concerned with the scope of the power to make laws with respect to trade and commerce with other countries contained in s.51(i) of the Constitution. Specifically, the Court had to consider whether a provision for forfeiture and seizure of goods was a law with respect to trade and commerce. An inquiry of this kind is not analogous to an inquiry as to the breadth of a specified subject (such as annual leave) for the purpose of the exercise of the Commission's arbitral power. Thirdly, the WR Act itself, in s.89A(6), establishes the limits of the category. That subsection makes it clear that the matters specified in s.89A(2) are not to be expanded, but that an award provision which is incidental to one of the matters is permitted, provided it is also necessary for the effective operation of the award. The State of New South Wales, supported by the LTU and the ACTU, submitted that the implied incidental power is not restricted to that which is *"necessary or essential"* for the effective operation of the express power. It cited authorities (to which we have already referred) concerning the construction of various grants of power in s.51 of the Constitution in support of that proposition. It went on to submit that, even if s.89A(6) is more restrictive than the implied incidental power, the implied incidental power is still available. We do not accept these submissions. We have already pointed out the difference in character between a constitutional grant of power and the specification of allowable award matters. In addition, it is impossible to construe s.89A(6) by resort to an implied power which is inconsistent with the clear words of that subsection. In enacting s.89A(6), the legislature has given direct guidance on the extent to which the Commission may make provisions extending beyond the subject matters specified in s.89A(2). We see no reason to depart from the language of the statute, as explained in the *CBAOA Case* [cited above], and limited by s.89A(6).

The employers submitted that s.89A(6) should be construed as conferring a power analogous to the power given to a Court to imply a term into a written contract. The principles governing the implication of contractual terms are founded upon the need to complete the agreement between the parties where there is

an evident and significant gap in the terms of their contract. The Court puts itself in the position of the contracting parties for this purpose. We do not see how these principles can assist in the application of s.89A(6) which, as we have already said, is in clear terms. Substitution for those clear terms of tests for the implication of contractual terms which would require application in each case has the potential to distract attention from the statutory test and lead the Commission into error in its application.

PROPOSED HOSPITALITY AWARD

Having heard the award parties fully on their proposals and counter proposals and taking into account the submissions of the interveners we have decided:

- o to vary the Hospitality Award pursuant to Item 49(1) so that it deals only with allowable award matters;
- o to review the Hospitality Award to determine whether it meets the criteria in Items 49(7) and (8); and
- o to publish a separate draft order, the substance of which is contained in the comparative table referred to below.

The draft order is, in part, for the purpose of the award variation contemplated by Item 49(1) and, in part, to facilitate the variation contemplated by Item 49(9). In the case of some award clauses, we have reached the conclusion that variation is necessary to meet one or more of the criteria contained in Items 49(7) and (8), but, on the material before us, we have been unable to redraft the clauses.

We also publish as an attachment a table comparing the current Hospitality Award and our draft order [Attachment F].

The parties will be given the opportunity to comment on the draft order prior to its finalisation. Vice President Ross will convene a conference of the parties on Tuesday, 3 February 1998 for the purpose of providing the parties with such an opportunity. A report will be prepared setting out the views of the respective parties. We will have regard to that report when determining our final order.

A description of the changes and the reasons for them are set out below. We do not, however, specify a number of minor changes; for instance, changing the word "*will*" to "*must*". Unless otherwise indicated, the clause numbers referred to are those in the current Hospitality Award.

1. Award Title

The year of the award has been updated to 1998.

1A. Preamble

This has been deleted as it is not an allowable award matter. General statements which describe objectives or philosophies rather than establishing entitlements are, generally speaking, not allowable. Even if such provisions were allowable they would be of no utility because the characteristics of safety net awards are clearly set out in the WR Act itself. We can discern no sound basis for retention of such provisions pursuant to s.89A(6).

2. Arrangement

Consequential changes will be required once the numbering of the substantive clauses is completed.

2A. Anti-discrimination

We propose to adopt the employers' draft but to modify it slightly to comply with Item 49(8)(c). The main change is the insertion of the words "*respecting and valuing the diversity of the work force*" to conform with s.3(j) of the WR Act. The Human Rights and Equal Opportunity Commission (HREOC) proposed the adoption of a model Work Flexibility clause. We have decided that the purpose of such a clause is met adequately by the proposed anti-discrimination clause and the various enterprise flexibility and facilitative provisions which permit variations in working arrangements to cater for a variety of situations.

3. Definitions

For the most part we have adopted the employers' proposals as to numbering and content. We draw particular attention to the following:

- o the definition of liquor service employees contained in clause 3.11 should be amended and relocated;
- o there is an advantage, pursuant to Item 49(8)(c), in relocating the definition of "*continuous service*" and our draft order does that;
- o we have not adopted the employers' suggestion that the definition of "*transmission of business*" be relocated to the definitions clause although we have decided, as proposed by the union, to relocate part of it to the "*Who is Bound by this Award*" clause. This change is referred to below in dealing with clause 6; and
- o the definitions of "*rostered day off*" and "*resort*" have been amended slightly.

4. Date the Award Starts

This clause should read "*This award comes into force on . . .*". We have adopted this formulation in light of the requirements of s.146(1).

5. Where and Who the Award Covers

We have adopted the employers' draft which does not differ substantially from the existing clause. During the s.150A Review Process under the previous Act, the parties adopted the existing heading. Headings in similar form can be found to a number of other clauses. We have decided not to alter these clauses because of their history, but there is no need for the parties to other awards to change to the same form.

6. Who is Bound by this Award?

Neither the employers nor the LTU sought any change of substance. At this stage we are not prepared to include the clause in our draft order. We find the clause confusing and its meaning obscure. This is a matter on which the parties should confer. The LTU sought the relocation into this clause of the transmission of business provision currently found in clause 17.9. We agree in principle with that approach.

7. Application of Appendix A

This also is a clause upon which the parties should confer. It is undesirable that the award should have an appendix which applies to one employer only. It is preferable that such provisions be dealt with in an agreement. We have not adopted the employers' proposal for amendment primarily for that reason but also because of the possibility that the legal effect of the existing clause might be changed to the detriment of the parties to whom the appendix applies.

8. Relationship with Other Awards

Pursuant to Item 49(8)(c), we have adopted the employers' proposal.

8A. History of Award Changes

This clause should be deleted because it is not an allowable award matter. The recording of historical changes in award provisions does not establish entitlements. It is information which is available elsewhere, in any event, should it be needed. We also note that nothing was put to us which could justify the conclusion that the clause is necessary for the effective operation of the award.

9. Enterprise Flexibility Provision

Almost all of the parties submitted that this clause requires substantial amendment. We agree. Nevertheless we have found the revision proposals to be unnecessarily complex and repetitive of the provisions of the WR Act, particularly ss.113A and 113B. We have decided on a much simpler clause which is consistent with Item 49(7)(a). In drafting the new clause we have taken into account:

- o the provisions of the WR Act dealing with freedom of association;
- o the fact that a significant number of enterprises and workplaces in the hospitality industry are unlikely to be unionized;
- o that the Commission must decide in each case whether the award should be amended (s.113B); and
- o the desirability of permitting parties as much freedom as possible in deciding whether to establish a consultative process and the form any such process should take.

The main feature of the new clause is its brevity. It does not require that a consultative process be established in every enterprise, but only when the employers or employees wish that to occur. The nature of the process is to be decided based on the needs of the enterprise. There is no requirement for formal decision-making ballots, although the Commission will no doubt ensure that there is a genuine agreement prior to varying the award pursuant to s.113B. We have not set out the detailed requirements of that section, although the heading to the clause will contain a note directing readers to ss.113A and 113B. Section 113B along with s.88A provides sufficient guidance for the Commission and further elaboration in the clause itself would not be useful.

9A. Index of Facilitative Provisions

The employers submitted that this clause was not allowable and that it did not fall within s.89A(6). We do not agree. There is no relevant difference between this index and the index contained in the arrangement clause. The content of the clause will require review on settlement of the orders to ensure it is accurate.

10. Alternative Method of Payment

We have decided to relocate this clause in the payment of wages clause and to amend it slightly as proposed by employers. The LTU sought the inclusion of a new provision requiring the agreement of a majority of employees before the alternative method of payment is introduced. There was some general evidence that might be relevant but no direct evidence of abuse of the existing provisions. We reject that part of the LTU's claim. The employers sought the deletion of

the requirement that records be kept of agreements made under the clause. We believe the requirement to keep a record provides a valuable protection for employees and we are not prepared to delete it. In our view the provision is incidental to the award provisions governing pay and allowances and necessary for their effective operation (s.89A(6)).

11. Introduction of Major Change in the Workplace

This clause is standard in many awards of the Commission. It is included in the model order resulting from the *Termination Change and Redundancy Case* [(1984) 8 IR 34]. The subject matter is consultation with employees in relation to organisational change which is likely to affect their employment. We are unable to characterise the content of the clause by reference to any of the allowable award matters in s.89A(2) and we propose to delete it because it is not allowable. We reject the submission that paragraphs (m) and/or (n) are sufficient. For this purpose we have applied the approach adopted by the Full Bench in the *CBAOA Case* (cited earlier). Paragraph (m) deals with payment on termination by reason of redundancy, including the level and nature of the payment, while paragraph (n) deals with the notice of termination of employment to be given or received by an employee. Neither of these matters extends to consultation in relation to organisational change which may affect employment. We note that our conclusion is supported by a recent Full Bench decision in *Telstra Corporation Limited and the CPSU* [Print P3756 at 10].

12. Procedure to Avoid Industrial Disputation

We have decided upon an amalgam of the existing provision and the employer proposal. The amendments are made to comply with the criteria in Items 49(8) (c) and (d). In our draft we have left open the possibility that an employee or employees may choose to be represented by someone other than the LTU. This is consistent with the criterion in Item 49(7)(a).

We point out that we have not dealt with the question of what constitutes "*normal*" work for the purposes of new clause 11.4 since this will now be adequately addressed in the proposed new clause on Work Organisation (see below). We have also deleted the provision for disputes to go to a Board of Reference. A Board of Reference can be constituted by the Commission on application (s.131). We see no benefit in retaining procedures which to a large extent duplicate the provision already made for reference of unresolved disputes to the Commission.

13. Board of Reference

We have decided to delete the Board of Reference clause. As we noted in discussing the previous clause, s.131 permits the Commission to appoint a Board of Reference on application. The existing clause is general in character and serves no useful purpose. In addition, s.131 seems to contemplate that Boards of Reference will be established to deal with specific issues assigned to them by an award provision. Although we have some doubts about the validity of the existing clause it is not necessary to rule upon that issue. The deletion of the provision will not cause prejudice.

14.1 Sexual Harassment

We have decided to delete clause 14.1.1 as it is not an allowable award matter. HREOC submitted that it should be retained pursuant to s.89A(6). Such a provision might be capable of inclusion in a model anti-discrimination clause but we would be reluctant to alter that clause, other than in the manner indicated above, without a more wide-ranging examination of the implications. For similar reasons we have deleted clause 14.1.2. We point out that remedies are provided in other legislation for sexual harassment where it occurs. Whilst the unlawful dismissal provisions are relevant to the matters contained in both subclauses, sexual harassment is specifically made unlawful by the *Sex Discrimination Act 1984* (Commonwealth) and similar legislation in all States and both

Territories.

14.2 Cleaning Work

The clause reads as follows:

"14.2.1 Any bar attendant or cellerman shall not be required to scrub or wash floors or tables; such work shall be performed by the useful.

14.2.2 No employees shall be required to clean or attend sanitary conveniences provided for the opposite sex except where the cleaning or servicing is to be carried out during a period or periods that a building or establishment is occupied solely by members of the same sex as the employees or where a sign is displayed indicating that the sanitary convenience is closed for cleaning or servicing."

We have concluded, consistent with the submissions of the LTU, that clause 14.2.1 is an allowable award matter. The allocation of duties as between classifications falls within s.89A(2)(a). On its face, however, the provision requires consideration in the context of the criterion contained in Item 49(7) (b). That item requires the Commission to identify award provisions containing practices that restrict or hinder the efficient performance of work and Item 49(9) confers a discretion upon the Commission to facilitate variation of the award to eradicate such provisions. Clause 14.2.1 has a number of unusual features. It is a direct restriction on the performance of work of a particular kind. The prohibited work would clearly not be beyond the skill and competence of persons employed in other classifications and no safety issue is involved. No reason was advanced for retaining the restriction. We consider that it is an example of the kind of rigidity in work practices which Items 49(7) and (9) are intended to eliminate. We have deleted the clause from our proposed award.

Clause 14.2.2 does not deal with an allowable award matter. The allocation of work by reference to the sex of the employee does not come within s.89A(2)(a). It is not necessary to deal with the employers' submission that the clause contains a limitation on work which is contrary to s.89A(4)(a), although we doubt the validity of the submission. Since no one argued that the provision was not allowable as such, it is appropriate to indicate our view that the subject matter of the clause is best left to the enterprise consistent with Item 49(7)(a).

14.3 No Deduction for Breakages

The employers sought the deletion of this clause. The LTU sought that it remain. We have concluded that the clause should remain in the award pursuant to s.89A(6) and 89A(2)(c). Whilst there was no full argument on the merits of the provision, the evidence such as it was tends to the conclusion that the clause contains necessary protections for employees. We have made some minor alterations.

15. Stand Down of Employees

The employers proposed an alternative formulation of the clause said to be consistent with the criterion in Item 49(8)(c). It was submitted there was no intention to affect substantive entitlements. We are not convinced, that if the employers' draft were to be adopted, entitlements would not alter. Whilst some features of clause 15.2 are unusual there was no evidence to support their deletion. Further, we note that the existing clause is consistent with the Joint Governments' submissions on the contents of stand down clauses generally. We have decided to retain the existing clause with the minor amendment proposed by the LTU.

16. Types of Employment

16.1 General

We have decided to reformulate this clause in the following way:

- by making provision for three types of employment, namely, full-time, regular part-time and casual; and
- by deleting clause 16.1.3 which is not allowable; in any event the deletion of that clause is not significant in light of the new requirement that employees be engaged in one of the three employment categories. Deletion of the provision does not imply that engagements of that kind are permissible under the award.

16.2 Casual Employment

We have adopted the employers' definition of a casual employee. The existing definition is confusing. It seems to permit an employee to be engaged in 2 different classes of work for an aggregate period in excess of 38 hours per week. We also doubt whether the extended definition serves any useful purpose. It certainly distracts attention from the essential nature of casual employment which we think is best summarised in the clause we propose to adopt.

We have decided to maintain clause 16.2.2 in its existing form, subject to the unresolved penalty rates claim with which McDonald C is currently dealing. We have redrafted clause 16.2.3 to read "*Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly*".

We do not believe that agreement between employer and employee to a change in the incidence of payment of wages should be contingent upon the agreement of the majority of employees. We therefore reject the union's proposal in that regard.

Clause 16.2.5 is inconsistent with the provision of clear employment categories. In addition the use of the word "*permanent*" may lead to confusion and may have unforeseen implications in relation to the award clause dealing with termination. As well, we have difficulty finding the clause "*necessary for the effective operation of the award*". The provision distinguishes in an unexplained way between casuals and other employees who might wish to be re-employed. We have deleted clause 16.2.5.

16.3 Part-time Employees

Both parties proposed amendments to accommodate the concept of regular part-time employment: see s.89A(2)(r) and (4) and Item 49(8)(b). In addition the employers sought two changes of substance; (1) the deletion of the limitation on weekly hours for part-time employees, and (2) a reduction in the minimum period of engagement from three hours to two hours. The LTU sought to preserve a minimum payment based on 15 hours work per week. This claim was apparently advanced on the basis that Item 49(6) protects employees from any reduction in entitlements arising from any variation made under Item 49. This issue was not really debated, but it seems that the effect of Item 49(6) is limited to situations in which the Commission varies award rates so that they operate as minimum rates. In the circumstances we have decided that:

- the limitations on the minimum and maximum periods of engagement and the related overtime arrangements contained in clause 16.3.1(a) and (b)

- are contrary to the limitation on the Commission's powers contained in s.89A(4) and should be deleted; and
- the employers' claim for reduction of the minimum period of engagement from three hours to two hours involves the reduction of an existing entitlement. Granting the claim may contribute to the productivity of at least some establishments covered by the award. On the other hand we are compelled by Item 49(7)(c) to have regard to fairness to employees. No doubt there would be some circumstances in which a two hour minimum period of engagement for part-time employees might be unfair, although we are unable to determine the extent to which this is so. Nor can we ignore the possibility that a reduction in the minimum engagement might suit some employees. In light of the unsatisfactory state of the material before us, we do not grant the claim; and
- the parties are directed to confer in relation to the position of existing part-time employees.

16.4 Apprentices

We have reviewed these provisions in light of the parties' proposals and the criteria in Item 49(8)(c) and (d) and have decided on one change of substance and a number of drafting alterations. HREOC expressed concern about the limitations on apprentices under 18 years of age working overtime and shift work. These limitations are in clause 16.4.8. There is no evidence that this provision is causing practical difficulties and we think it should remain. It is clear that the limitation contained in clause 16.4.8(b) is contrary to s.89A(4)(a) and we have deleted it. There was insufficient material before us to conclude that the proficiency payments contained in clauses 16.4.6 and 16.4.7 are obsolete. This is a question of fact which should be resolved prior to the settlement of the order.

16.5 Juniors

The existing limitations on the proportion of junior employees being paid junior rates contained in clause 16.5.3(a)(iii) and (iv) are not allowable, a conclusion supported by the terms of s.89A(4)(a). We have decided to delete those provisions. As for the rest of the clause, we believe that the employers' proposal may lead to confusion in the application of the provisions. We have adopted the substance of the union proposal with some minor changes. HREOC made submissions concerning clause 16.5.3(a)(vi) which provides that no employee under the age of 18 years shall be required to work more than 10 hours in a shift. HREOC proposed that we should seek submissions from the parties as to the need or otherwise for special protection for young employees. If any of the parties to the award thought it appropriate this issue could be addressed in a separate application.

16.6 Supported Wage Employees

We have decided to adopt minor drafting changes agreed by the parties but otherwise to preserve the existing provisions. The employers sought the removal of some of the assessment provisions, but provided no material on the subject. Again, we are reluctant to vary model clause provisions without proper evidence or debate. The employers also asked us to delete clause 16.6.9(d) on the basis that it was not an allowable award matter. This clause is part of the procedure for the assessment of an employee's capacity for the purpose of the supported wage provisions. It provides that an employee shall be provided with appropriate induction and training for the purposes of the assessment. The arguments against clause 16.6.9(d) remaining in the award were not fully developed and proceeded on the basis that training, as such, is a topic quite distinct from any of the matters listed in s.89A(2). Whilst this may be so, it is necessary to look at the work the clause does. In the context of the supported wage provisions, we believe that clause 16.6.9(d) is part of a general scheme for assessing remuneration for employees on a supported wage and is therefore incidental and necessary for the effective operation of the award on that matter.

17. Redundancy

The relevant allowable award matters are in s.89A(2)(m) and (n). Accordingly, a number of the existing provisions are not allowable and must be deleted. Clause 17.1 deals with discussions with employees after a decision has been made which may lead to the termination of employment. For the reasons given above in connection with clause 11, this provision is not allowable. Clause 17.7 requires notice of termination to be given to the Commonwealth Employment Service and similarly is not within the allowable award matters specified in s.89A(2)(m) and (n). Section 170CL of the WR Act provides that, if an employer decides to terminate the employment of 15 or more employees for certain defined reasons, the employer must give the CES written notice of the intended terminations. Clause 17.10.1 is related solely to the operation of clause 17.1.1 and, like that provision, is not allowable. The employers submitted that we should delete clause 17.6 which obliges an employer to give time off to employees in receipt of notice of termination of their employment to permit them to seek other employment. It was contended that the clause is not allowable. We disagree. The clause provides for "leave" within the meaning of the expression "other like forms of leave" in s.89A(2)(g). Clause 17.9 - Transmission of Business, should be moved to the proposed clause 6. The parties agree that clause 17.13 should be deleted on the ground that it is obsolete. We agree. With some significant exceptions, we have adopted the employers' proposals in relation to the remainder of clause 17. We emphasize that, in relation to a number of the changes the employers proposed, we are not satisfied they would, if adopted, have the effect contended for. We refer to Item 49(8)(c). The LTU submitted that, if we decided to delete the requirement for consultation in relation to potential redundancy, we should introduce an additional amount of severance pay for employees whose employment was terminated without any consultation. No substantial argument was put on the merits of this proposal. If the LTU wishes to pursue the matter, it should do so at some subsequent time. In this context we draw attention to the fact that applications for a significant review of the standard Termination, Change and Redundancy provisions are before another Full Bench.

18. Termination of Employment

We have adopted a number of the employers' proposals pursuant to Items 49(8)(c) and (d). In addition, we draw attention to the following changes:

- o we have rejected the proposal that the period of notice should not apply to probationary employees. There was no substantial argument on the merits of this proposal, which clearly represents a reduction in entitlements;
- o we have deleted clause 18.1.8 on the basis that it is not an allowable award matter for the reasons we have given in relation to clause 18.6. below;
- o clause 18.4 - Statement of Employment, is not an allowable award matter and we have deleted it;
- o the parties agree to the deletion of clause 18.5.2 and we have deleted it; and
- o clause 18.6 is the standard clause prohibiting termination of employment which is harsh, unjust or unreasonable. The clause is not allowable. The only matter directly relevant to termination is s.89A(2)(n). Plainly clause 18.6 prohibits terminations on certain grounds. A prohibition on termination is not allowable. We have deleted the clause.

19. Classifications and Wage Rates

There is no change to the table of wage rates. The allowances contained in clause 19.2 have been relocated to the new allowances clause. We have decided to replace clause 19.3 with a new clause dealing with work organisation, broadly in line with the employers' proposal.

"10.1 Employees must undertake duties as directed within the limits of their competence.

10.2 Despite the recognition of five career path streams, such streams do not prevent employees undertaking duties across different streams."

Because of the debate on this issue, we make it clear that the mixed functions clause will continue to apply. The whole of clause 19.4 and clause 19.5, except for clause 19.5.4(a) and (b), are by agreement deleted as obsolete.

20. Penalty Rates

The employers' proposal incorporates reductions in various penalty rates and other payments which are the subject of continuing proceedings before this Full Bench. The draft order contains the existing payments. We have made some minor drafting changes to the clause and, consistent with the views of the parties, have deleted clause 20.1.1 as obsolete.

21. Mixed Functions

Although the employers initially sought deletion of this provision no alteration is now sought. Accordingly the clause is retained in its existing form.

22. Payment of Wages

The employers sought a number of alterations in the existing provisions, only some of which we are prepared to grant. The following matters should be noted:

- we are not prepared to adopt the employer proposal to incorporate references to the pay cycle into clause 22.1. Doing so would serve no useful purpose and may lead to unintended results, e.g. in the case of casuals;
- we do not accept the employer argument that clause 22.1 is not allowable in so far as it provides that a change in the pay day is contingent upon the agreement of the LTU. Nevertheless, because of the potential for the provision to restrict flexibility in non-union workplaces, we have decided to replace the word "*union*" with the words "*majority of employees in the workplace*";
- clause 22.2 should be retained;
- clause 22.3 serves no real purpose since any difficulty arising in relation to the clause as a whole can be raised pursuant to the dispute settlement clause. It is undesirable that awards should contain more than one dispute settlement clause. We propose to delete clause 22.3;
- clause 22.5 confers an entitlement upon employees and we are not prepared to delete it on the material before us, even though we doubt its practical value;
- the employers sought the deletion of the whole of clause 22.7 on the basis that it duplicated other provisions. It is possible that entitlements might be lost if the whole of the clause was deleted. Nevertheless, we have concerns about the complexity of the provisions and believe the parties should redraft them to implement the objectives of the clause more concisely. In this connection we note that the LTU's version of clause 22.7.4 appears to have some merit;
- we are prepared to delete clause 22.8 as sought by the employers. We note, however, that the requirements of clause 22.8 are less stringent than those contained in Regulation 132B of the *Workplace Relations Regulations* (the Regulations). We also note that an exemption may be provided from those requirements pursuant to Regulation 132C; and
- clause 22.9 should be deleted as it is unnecessary and, in its current form, misleading.

23. Allowances

The employers sought the deletion of clause 23.2 on the basis that it deals with a matter of detail which is best left to the enterprise. We disagree. It provides an

entitlement to a meal allowance where an employee goes to the expense of providing a meal pursuant to a notice to work overtime and the overtime is subsequently cancelled. There was insufficient material to convince us that the provision should be deleted. Several other matters require comment:

- o the LTU sought the inclusion of a requirement upon the employer to provide a first aid kit. Such a provision is not allowable nor can it be justified pursuant to s.89A(6);
- o we have decided to adopt the substance of the LTU's proposal that clause 41 - Clothing, Equipment and Tools, should be incorporated into the allowances clause. We reject the employers' submission that the existing clause 41.1 is not an allowable award matter. The provision of an allowance in lieu of clothing or services where bona fide and justifiable on the merits is consistent with s.89A(2)(j). The new clause does no more than extend the concept already implicit in clause 41.1; and
- o we have adopted the LTU's proposal and moved the special allowances contained in clause 19.2 into the allowances clause. For ease of understanding it is desirable that all of the allowances provided for in the award should be in the same clause. The employers sought the deletion of the loading bay security officer allowance at Wrest Point Casino but gave no reason. As a general principle, enterprise specific allowances should not be included in awards of general application. Nevertheless, we cannot delete an entitlement of substance without examining the matter further.

24. Broken Periods of Work

This clause is retained with only minor alterations.

25. Superannuation

We are concerned that the existing provision is complex, lengthy and in large part duplicates the terms of the relevant legislation. In this context, we note the slow uptake of the provisions in the September 1994 *Superannuation Test Case* [Print L5100] as well as the Joint Governments' proposal to refine the clause to three simple provisions. In light of impending legislative change, the award parties have not asked us to vary the award at this stage and the Joint Governments' proposal is of an interim nature. We will not alter the clause on this occasion.

26. Hours of Work

The provisions of clauses 26.1 and 26.2 are unnecessarily complex. They should be simplified so that hours may be set by local agreement between employer and employee, provided certain basic conditions are met. The clause we propose lists a series of options for the arrangement of working hours. These options are already contained in the award. Subject to a number of minimum conditions which must always be observed, agreement on the arrangement of working hours is a matter between the employer and the individual employee. There are two matters that require additional comment. The employers asked us to relax the limitation on the working of broken shifts to a 12 hour spread where the employer and employee agreed. They also sought an amendment of the requirement for a 10 hour break between shifts to make the length of the break negotiable between the employer and individual employee. We reject both of these proposals because of our concern that, in the circumstances of this industry, unfair demands might be made on employees if we made the alterations sought.

27. Breaks

The existing clause is not without complexity. Both parties produced draft provisions designed to clarify the award rather than alter its effect. We prefer the

LTU's proposal and we intend to adopt it.

28. Overtime

Both the employers and the LTU proposed a number of minor drafting changes. We have made one change of substance which is to delete the requirement in clause 28.1 that an employer must, if practicable, offer employees the opportunity to work overtime in preference to employing casuals. This is not an allowable award matter. Nor can it be justified pursuant to s.89A(6). Subject to that deletion we have adopted the LTU draft.

29. Roster

Clause 29.1 requires some amendment both for consistency with the types of employment now specified in the new clause 15 - Types of Employment, and in order to make the meaning clearer. Clauses 29.2 and 29.3 prescribe different periods of notice of roster changes depending upon the employee's existing roster. We can see no justification for different periods of notice or for any period of notice greater than seven days.

30. Annual Leave

This clause has been redrafted to minimize duplication and to make it easier to understand. The transmission of business provisions, which also currently appear in the redundancy clause, will be relocated to the clause specifying to whom the award applies. The LTU's proposal to modify the definition of continuous service and to relocate it in the definitions clause is a sensible one and we adopt it.

31. Sick Leave

32. Bereavement Leave

33A. Personal/Carer's Leave

In the *Family Leave Test Case decisions* [(1994) 57 IR 121 and (1995) 62 IR 48] the Commission decided to introduce a package of measures designed to assist workers in reconciling their employment and family responsibilities. These measures included:

- o the aggregation of existing sick leave and bereavement leave provisions with access to the aggregated entitlement for the purpose of the carer's leave;
- o facilitative provisions permitting employers and employees to agree to allow:
 - up to one week's annual leave to be taken in single days,
 - time off in lieu of overtime,
 - up to one week's annual leave to be taken in single days,

- time off in lieu of overtime,
 - the working of "make up" time during which an employee may perform additional work at ordinary time to make up for time lost,
 - unpaid leave to be taken to enable an employee to care for a family member who is ill, and
 - more flexible access to rostered days off; and
- o the insertion, upon application, of appropriate part-time work provisions into awards.

The Hospitality Award has been varied to give effect to the *Family Leave Test Case decisions*. The current award provision for personal/carer's leave aggregates sick leave and bereavement leave entitlements thereby creating a pool of leave which can be used for the purpose of:

- o personal illness or injury;
- o bereavement; or
- o caring for an immediate family or household member who is sick and requires the employees care and support.

In addition to a personal/carer's leave clause, the Hospitality Award retains separate clauses relating to sick leave and bereavement leave.

There are a number of problems with the current award provisions. In particular:

- o there is a significant duplication between the award clauses dealing with sick leave, bereavement leave and personal/carer's leave. For example, the amount of sick leave to which employees are entitled is set out in clauses 31.6 and 33A.3.1; and
- o there is some inconsistency between the various clauses. The conditions attached to bereavement leave illustrate this problem. Clause 32.1 provides that an employee:

". . . may be absent from work for up to two days without loss of pay on the death of his or her spouse, de facto spouse, father, mother, brother, sister or child."

By contrast, clause 33A.4.1 provides that an employee is entitled to bereavement leave "*in cases of genuine need*". The amount of leave available is dependent on the circumstances of the individual case. Further, clause 33A.4.3 provides that an employee is entitled to use accumulated sick leave as bereavement leave when "*a member of the employee's immediate family or household in Australia dies*".

There is a clear need to standardise the conditions to be met before an employee is entitled to bereavement leave. In the *Personal/ Carer's Leave Test Case - Stage 2 decision* [Print M6700] the Commission said:

"The only area in which we have decided to adopt a standard approach to bereavement leave is in relation to eligibility for bereavement leave, that is the scope of the nominated class of persons. This change will mean that an employee will be able to

access bereavement leave in the event of the death of a member of the employee's immediate family or household." [(1995) 62 IR 48 at 55];

- the facilitative provision in relation to rostered days off (see current clause 33A.9) is no longer necessary given the additional flexibility which the proposed award provides in relation to hours of work;
- the facilitative provision which permits agreements to be reached at the enterprise level to establish a system under which annual leave may be taken in single day periods (see current clause 33A.7) is unnecessary as the current annual leave clause does not prevent annual leave being taken in single day periods; and
- The current clauses are not expressed in plain English or easy to understand in both structure and content. In this regard we note that the orders arising from the *Family Leave Test Case decisions* reflected the alternatives proposed by the parties to those proceedings [e.g. see (1996) 66 IR 138].

In our view there is scope for a simpler award provision dealing with personal leave.

Subject to some minor amendments, we think that the framework model clause proposed by the Joint Governments is an appropriate means of simplifying existing award clauses relating to sick leave, bereavement leave and carer's leave. The framework model clause we propose is Attachment B.

We have used the framework model clause to redraft the current award clauses dealing with sick leave, bereavement leave and personal/carer's leave, i.e. clauses 31, 32 and 33A respectively. Proposed clause 31 replaces all of these provisions. The proposed clause is simpler but is intended to protect existing employee entitlements. The proposed clause also standardises the conditions to be met before an employee is entitled to bereavement leave. Such leave will now be available because of bereavement on the death of an immediate family or household member. This change addresses HREOC's submission that the current clause 32 is discriminatory on the ground of sexual preference and marital status because it does not make bereavement leave available on the death of a member of the employee's household.

The only change of substance is to express the aggregated personal leave entitlement in hours. Current clause 33A.1 provides that the amount of personal leave an employee may claim depends on how long he or she has worked for their employer. After the first year of employment, an employee is entitled to "76 hours of sick leave" and two days bereavement leave. We have decided to convert the two days bereavement leave to 16 hours leave. The new aggregated personal leave entitlement is 92 hours.

We note that the employers also proposed that the current bereavement leave entitlement be expressed in hours. The employers submitted that the current two days entitlement should be converted to 15 hours 12 minutes, based on 7 hours 36 minutes per day. We think an 8 hour per day conversion is more appropriate. It recognises that employees may have a working hours arrangement under which they work more than 7 hours 36 minutes per day.

A number of existing provisions have been deleted as they are no longer necessary, e.g. current clauses 33A.7 and 33A.9.

Two provisions have been relocated to proposed clause 26 - Hours of Work:

- existing clause 33A.9.2, which allows rostered days off to be taken in part day amounts, has been moved to proposed clause 26.3.5(d); and
- existing clause 33A.8 - Make-up Time, has been moved to proposed clause 26.4 and 26.5 with minor amendments.

An annotated proposed clause 31, setting out the origin of each of the provisions, is Attachment C.

We note that we have not adopted submissions by HREOC which sought to change the provisions of the current clause to address issues relating to same sex partners and persons to whom an employee has caring obligations through kinship and cultural ties. These issues were considered, and rejected, in the *Personal/Carer's Leave Test Case - Stage 2 decision* [(1995) 62 IR 48]. In that decision the Commission said at 57:

"We reject the ACTU's submission that the definition be extended to explicitly cover same sex partners and persons in a relationship of traditional kinship. In our view the broad category of household member covers same sex relationships. Providing a specific entitlement would require employees to reveal their sexual preference to their employer. Such an infringement of privacy is, in our opinion, undesirable.

In relation to the second aspect of the ACTU's proposal, any application to extend the existing definition to include relationships of traditional kinship should be determined in the context of a specific case. Such an approach would allow the relevant issues to be properly considered in a specific factual context."

Nothing put in these proceedings persuades us to depart from the test case decision in the way proposed by HREOC.

33. Parental Leave

This clause is in need of simplification and we have adopted the draft proposed by the Joint Governments and the employers.

HREOC submitted that two aspects of the current parental leave provisions constituted direct pregnancy discrimination, namely:

- o the right of an employer to require an employee to commence maternity leave within six weeks of her anticipated date of confinement; and
- o the capacity for an employer to transfer a pregnant employee to a safer job that may result in the employee receiving lower pay and conditions.

The parental leave clause we propose addresses the first of the issues identified by HREOC. The provisions enabling an employee to commence maternity leave six weeks before the date of birth are now expressed facilitatively, enabling the employee to continue working within the six week period before the expected date of birth. The relevant proposed clause states:

". . . 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.

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."

The second issue relates to proposed clause 32.8 which is in the following terms:

"32.8.1 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.

32.8.2 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."

We are not prepared to vary clauses 32.8.1 and 32.8.2 in the manner sought by HREOC. These clauses are consistent with the relevant test case decision and a broader debate is necessary before consideration is given to their amendment.

We also note that the existing parental leave provisions do not apply to all of the respondents to the award. That situation arises from the fact that not all employers bound by the Hospitality Award are parties to a parental leave dispute.

33B. Jury Service

We have made some minor amendments to this clause in an endeavour to make its meaning and effect clearer.

34. Public Holidays

The parties have agreed that, with one exception, this clause should be dealt with by Mahon C in the proceedings which have been before him for some time. The exception is that this Bench should determine whether union picnic day is a public holiday for the purposes of s.89A(2)(i). The employers and the Joint Governments submitted that union picnic days are not gazetted holidays or holidays which the public in general enjoys. Against these considerations is the fact that union picnic days have been included in the public holiday provisions of awards for decades in a large number of industries. There are numerous decisions of the Commission and its predecessor, the Australian Conciliation and Arbitration Commission, in which a union picnic day has been treated as a public holiday. The Full Bench decision which established the test case standard for leave entitlements in Commission awards relating to public holidays included union picnic day as a day which may be included as one of the additional public holidays constituting the minimum entitlement of leave under the public holidays clauses. As we have already indicated, the use of terms in their industrial context is an important element in construing the matters listed in s.89A(2). We have therefore concluded that union picnic day falls within the expression public holidays for the purposes of s.89A(2)(i). In accordance with the agreed position of the parties we will leave Mahon C to deal with other aspects of the public holidays clause in light of our conclusion on the jurisdictional issue. We reject any implication to be derived from HREOC's submissions that the clause discriminates against employees from non-Christian backgrounds.

35. Provision of Employee Accommodation and Meals

This clause permits an employer to make specified maximum deductions from an employee's wages in compensation for the provision of accommodation and meals. The employers contended that the clause was not allowable. The clause serves the useful purpose of preventing employers from indirectly reducing wages by excessive charges for accommodation and meals. On the arguments before us we have concluded that the provision protects award wages and is incidental to the wages clause and necessary for its effective operation. The only exception is clause 35.5 which relates to the heating and cooling of rooms. That part of the clause is not allowable and we propose to delete it. The LTU's proposal for the amendment of clause 35.5 is unnecessary because application

for disability allowances can be made on a case by case basis.

36. Travelling Transport and Fares

This clause requires an employer to provide transport and accommodation for the night when an employee is required to work late and to provide transport or the cost of it when an employee is required to start early. The employers submitted that the clause was not allowable. Provision of transport, and accommodation, is an allowance. Both could easily be converted to money amounts. Indeed this is the way in which clause 36.2 currently operates, an allowance being payable to reimburse the employee if transport is not provided when he or she is required to start early. The point is made explicit in the LTU's draft. We have adopted the LTU's proposal and relocated the provision to the allowances clause, a course suggested by the LTU.

37. Training

The employers asked us to delete this clause on the basis that training is not an allowable award matter. The LTU consented to its deletion but on the basis that the provision is obsolete, dealing with a training program which no longer exists. We do not accept that training can never be the subject of award prescription. For example, clauses 37.4 and 37.5 are allowable because they make provision for rates of pay and other benefits which are clearly allowable matters. Nevertheless, we have decided to delete the whole of the clause because it is obsolete. In any case where training is said to be an allowable award matter, careful examination of all of the circumstances will be required.

38. Relationship to the National Training Wage Interim Award 1994

This clause remains.

39. Accident Pay

The employers submitted that this clause was not allowable and an attempt was made to convince us that we should overturn the Commission's recent decision in the *CBAOA Case* [cited earlier]. In that case, the Commission received a large amount of material and heard detailed submissions before concluding that accident pay falls within s.89A(2)(j). In this case the Joint Governments did not contest the allowability of the provision. On the material and argument before us we are not prepared to reopen the *CBAOA Case* decision and we confirm, therefore, that accident pay is an allowable award matter.

40. Amenities

We have concluded that this clause is not allowable. In substance it requires an employer to provide certain kinds of premises for its work force. The LTU proposed a redrafted clause but we have decided that proposal is not appropriate. The LTU's draft would have had the effect of removing the right to make any deduction for the provision of accommodation where adequate "*heating and cooling devices*" are not provided. If an inadequacy exists in particular premises application might be made for an allowance to cover the alleged disability.

41. Clothing, Equipment and Tools

We dealt with this clause when dealing with clause 23 - Allowances.

42. Occupational Health and Safety

As we have already noted a requirement that the employer provide a first-aid kit is not allowable and this clause is deleted.

43. Time and Wages Book Sheets

Although we have rejected the employers' submission that time and wages records are not an allowable matter, we have also indicated that we are prepared to delete award requirements with respect to records because the Regulations require all that the award requires and more.

44. Posting of Award

We have retained the clause because it is incidental and necessary to the effective operation of the award.

45. Preference

The preference clause is not an allowable matter and is in any event contrary to s.94 of the WR Act. We have deleted it.

46. Stop Work Meetings

The employers asked us to delete this provision because it is contrary to s.124(1) of the WR Act. We disagree. If an employee is given leave by the employer to attend a union meeting that leave cannot be described as industrial action. There was no submission that the clause was not allowable. Further, the employers' attack on the clause was based on legal grounds; no argument being put on the merits. This clause has unusual features, as it is already in the award we intend to leave it there.

47. Union Officials

This clause is not an allowable award matter under s.89A(2). Nevertheless the Commission does have power to award some entry provisions pursuant to Division 11A of Part IX of the WR Act, in particular s.285G. Indeed, that section is the only source of the Commission's power to award right of entry provisions. An award made under that section would be quite different from the existing clause. We are not prepared to redraft the clause in the absence of a detailed case, particularly when the WR Act already provides for entry in the Division referred to. We have decided to delete this clause.

Appendix A

Appendix A is retained. We think it appropriate that the parties to the appendix address the apparent discrimination, pointed out to us by HREOC, implicit in clause 58 of the appendix.

Appendix B

Appendix B is deleted because it is obsolete.

SHOULD THE COMMISSION ESTABLISH PRINCIPLES?

In addition to the review of the Hospitality Award, the employers, supported by the Joint Governments, asked us to provide general guidance to assist parties to other awards in the process of applying Items 49 and 51. The employers sought an Interim Statement containing guidelines or principles. The Joint Governments put forward a detailed set of principles, complete with examples, designed to illustrate how the terms used in s.89A(2) are to be applied. There is at least one compelling reason to establish principles. On 1 July 1998, by force of Item 50(1), each award of the Commission ceases to have effect to the extent that it provides for matters other than allowable award matters. On and after that date the Commission is required to review each award, unless a review under Item 49 has already taken place, to ensure that provisions which have ceased to have effect are removed (Item 51). Many hundreds of awards will require review in a timely way. The task will be of historic proportions. Without some guidance there is the potential for the review process to be repetitious and unnecessarily time consuming, both for the parties and for the Commission.

The LTU and the State of New South Wales each advanced reasons why we should not establish principles. In particular, and in this they were supported by the ACTU, they submitted that, once the Hospitality Award was fully reviewed, adequate and appropriate guidance would be available. They submitted that principles should not be established because of the limited factual material before us and the absence of debate on a number of issues. They saw difficulties, for example, in establishing principles relating to paid rates awards when no paid rates award was before us. The Joint Governments, on the other hand, submitted that their proposed principles had been before the Commission at all relevant times and, in the absence of persuasive arguments against them, they ought be established.

We intend to establish principles. In so deciding it is appropriate that we rule on a number of the submissions on the issue.

Firstly, we reject the argument put by the State of New South Wales that our power to establish principles is limited because of the constraints such principles would impose on the jurisdiction of Members of the Commission sitting alone. The purpose of principles is to limit discretion in all but Full Bench cases.

Secondly, we agree with the Joint Governments that the Commission has power pursuant to Item 53 to establish principles relating to allowable award matters and matters arising under Items 49(7) and (8). The only relevant limitation in Item 53 is that the principles must be about varying awards "*under this Part*". Where the Commission takes steps under Item 49(9) to facilitate variation by reason of the matters in Items 49(7) and (8) it will almost inevitably vary the award.

Thirdly, for the most part we have adopted the approach that it is not appropriate to provide detailed guidance on specific award clauses other than those dealt with in our review of the Hospitality Award. This approach is consistent with that urged upon us by the State of New South Wales and the thrust of the joint submissions of the National Pay Equity Coalition, the Women's Electoral Lobby and the Australian Federation of Business and Professional Women. We agree with the LTU, the State of New South Wales and the ACTU that the proposed new Hospitality Award will be of assistance to the parties to other awards. We have approached the review of the Hospitality Award with a view to the significance of the changes for the award system generally. We would expect, for example, that the conclusions we have reached about s.89A matters would be adopted in other awards.

Finally, we note that we have power to establish principles under Item 53 and that we also have power, pursuant to s.106(1), to establish principles about the making or varying of awards in relation to each of the allowable award matters. In both cases, principles once established are binding on Members sitting alone. We have decided to establish principles under Item 53. The AHA's application in this case was made under both Item 49 and s.113. In the circumstances, it is not necessary for us to formally decide that, in so far as the principles deal with allowable award matters, they are also made under s.106(1). Where Members of the Commission sitting alone are considering applications, not under the WROLA Act, but under Part VI of the WR Act, we expect that all the parts of this

decision touching allowable award matters would be followed.

AWARD SIMPLIFICATION PRINCIPLES

We have decided that we will establish principles. The principles will describe the process which will apply pursuant to Items 49 and 50 of Schedule 5 of the WROLA Act. We refer to them as award simplification principles. The term "*award simplification*" does not appear in the WROLA Act or the WR Act. Nevertheless, the term has gained some currency as descriptive of the exercise required to be undertaken by the Commission pursuant to the WROLA Act. It is no doubt derived from the terms of s.88A(c). It is convenient to adopt the term to describe the range of different considerations the Commission is required to take into account pursuant to Items 49 and 51, s.89A and other sections of the WR Act which may be relevant to a review. We have adopted the framework suggested by the Joint Governments, with a number of significant differences.

We are not prepared to require, as part of an award simplification exercise, that all awards which are not operating as minimum rates awards be converted to minimum rates awards in the manner proposed by the Joint Governments. Whilst this will be an appropriate course where the award is not a paid rates award, we believe there has been insufficient attention given in this case to the treatment of paid rates awards. Items 49(5) and 51(4), which deal with the conversion of awards which are not operating as minimum rates awards, is each discretionary. The legislation contemplates the continuation of paid rates awards in some circumstances. Neither the WROLA Act nor the WR Act in terms requires paid rates awards to be converted. To the contrary, the WR Act permits the variation of such awards and, in specified circumstances, the creation of new ones (ss.170MX and 170MY).

We have retained a number of the discretions conferred on the Commission by the terms of the WROLA Act. We are concerned that, if the principles are unduly prescriptive, a multitude of Full Bench references will result which will significantly hamper the award simplification process as a whole.

The principles are as follows:

1. The Commission will review awards in the following circumstances:

- o upon application under Item 49 of the WROLA Act, provided that the Commission is satisfied that the applicant or applicants have made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters; and
- o after 30 June 1998, when the Commission is satisfied that the award has been affected by Item 50 of the WROLA Act, relating to parts of an award that ceased to have effect at the end of the interim period.

A party proposing any departure from this principle must apply pursuant to s.107 of the WR Act for the matter to be dealt with by a Full Bench.

2. Awards will be varied so that they:

- o act as a safety net of fair minimum wages and conditions of employment (s.88A(b));
- o are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s.88A(c)); and
- o encourage the making of agreements between employers and employees at the workplace or enterprise level (s.88A(d)).

3. A simplified award is one which provides minimum working arrangements encompassing entitlements to pay and conditions and reasonable protections for both employees and employers in the accessing and granting of the entitlements. Such awards may also include clauses which are administrative in nature (e.g. title, parties bound, arrangement) and clauses which provide for the flexible application of the award such as enterprise flexibility clauses and majority clauses.

4. When varying an award pursuant to these principles, the Commission will seek to ensure that at the end of the process the award has the following characteristics:

- it does not contain provisions that are not either allowable award matters, or both incidental to allowable award matters and necessary for the effective operation of the award;
- it provides minimum entitlements for employees in relation to allowable award matters consistent with its safety net character;
- subject to Principle 6, it provides for rates of pay that operate as minimum rates;
- where appropriate, it includes provisions enabling the employment of regular part-time employees;
- it does not include provisions which set maximum or minimum hours of work for regular part-time employees; and
- it includes an anti-discrimination clause.

5. Where appropriate, the award must also be reviewed against Items 49(7) and (8) or Items 51(6) and (7) so that it:

- does not prescribe matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
- does not prescribe work practices that restrict or hinder the efficient performance of work;
- does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees;
- contains facilitative provisions that allow agreement at the workplace or enterprise level between employers and employees (including individual employees) on how the award provisions are to apply;
- is expressed in plain English and is easy to understand in both structure and content;
- does not contain provisions that are obsolete or need updating;
- it provides support for training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
- does not contain provisions which discriminate against employees on any of the grounds specified in Item 49(8)(f); and
- complies in all other respects with the requirements of the WR Act and the WROLA Act.

6. In considering whether to vary a paid rates award pursuant to Items 49(5) and 51(4), the Commission will take into account any Full Bench decision subsequent to this one which deals with the variation of paid rates awards.

7. Award simplification does not involve a general review of the level of award entitlements. Despite this, entitlements coming within Items 49(7)(b) and (c) and Items 51(6)(b) and (c) may be altered if a proper basis exists for doing so.

8. There is no requirement that an award contain provisions in respect of each of the allowable award matters. Claims for new award provisions may be dealt with by application in the usual way under Part VI of the WR Act. Claims for new allowances should be the subject of a separate application unless the principle of the payment of an allowance already exists in the award in relation to the same or a similar entitlement. Even in those cases the form and amount of the allowance must be justified on the merits.

9. The new Hospitality Award which we propose, subject to settlement of the draft order, provides guidance to the parties to other awards in the award simplification process. In each award, account will need to be taken of any special circumstances which might be relevant. To assist award parties generally, we have prepared two tables which illustrate the application of ss.89A(2) and (6) to the Hospitality Award (Attachments D and E). In addition to the personal leave model framework clause (Attachment B) our proposed award contains amended model clauses for enterprise flexibility, anti-discrimination and parental leave.

The matters dealt with in Items 49(7) and (8) are substantially replicated in Items 51(6) and (7) and s.143(1B) and (1C). In addition the provisions of Items 54 (1) and (2) are substantially replicated in s.143(1D) and (1E). The legislative scheme involves the application of the same approach during the interim period, in the reviews required after the interim period and in the making of awards generally. Because of the central importance of the matters dealt with in Items 49(7) and (8), we now deal with each of those matters specifically.

ITEMS 49(7) AND (8)

Unnecessary Detail

Item 49(7)(a) of the *WROLA Act* provides that the Commission must, if it considers it appropriate, review the award to determine whether or not it meets the criterion that:

" . . . it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level."

Facilitative provisions and agreements under enterprise flexibility provisions are an important means of providing for the flexible application of award provisions in ways that suit the needs of individual workplaces and enterprises. We deal with these mechanisms later in this decision.

Multiple-employer awards should generally not include provisions which apply only to single enterprises. In the context of the Hospitality Award we have decided that the following provisions prescribe *"matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level"*.

- o clause 13 - Board of Reference - deleted from the proposed award;
- o clause 26 - Hours of Work - amended to provide that the arrangements for working an average of 38 hours per week are to be agreed between the employer and employee at the workplace, subject to compliance with a number of minimum standards.

Workplace Efficiency and Productivity

Items 49(7)(b) and (c) of the *WROLA Act* provide that the Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:

"(b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;

(c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees."

The criteria specified in Items 49(7)(b) and (c) have a number of characteristics similar to those identified in the structural efficiency reviews of the 1980s and 1990s.

As noted by the Joint Governments, the use of majority clauses has the potential to be an important factor in facilitating the ease of operation of awards at the workplace and ensuring that awards do not operate to hinder the flexible and effective application of working practices and arrangements.

A majority clause provides that, where employees in an enterprise covered by a particular award are in the minority, the conditions of employment prescribed by the award covering the majority of employees in that enterprise shall apply [see *Safety Net Adjustments and Review decision* (the *September 1994 Review decision*) [Print L5300 at 32]]. Majority clauses are one means of addressing the problems associated with multiple-award coverage.

The Commission's consideration of majority clauses is not new. In the *April 1991 National Wage Case decision* it said:

"In light of the Commission's experience with majority clauses in awards, we suggest that the parties should give consideration to inserting such clauses in awards . . . The parties should give particular attention to the practical implementation and application of such clauses having regard to, among other things, the ambit of the dispute upon which any proposed order is based and the results expected to follow from the adoption of a majority clause." [Print J7400 at 47]

These comments were endorsed in the September 1994 *Safety Net Adjustments and Review decision* [Print L5300 at 33] and the October 1995 *Third Safety Net Adjustment & Section 150A Review decision* [Print M5600 at 33]. In the latter decision the Commission determined that a model majority clause should be inserted in multiple-industry awards unless it could be demonstrated that there were special circumstances warranting a different approach. In that context the Commission said:

". . . the scope of the majority clause to be inserted will be determined on a case by case basis and should be as broad as possible. This should ensure a high level of consistency in the employment conditions applicable to award covered employees in particular enterprises. In determining the scope of a clause, the Commission will ensure the clause will not result in unfairness to the employees concerned. Each clause will need to be considered in the context of a specific application to vary the relevant award." [Print M5600 at 34]

The model majority clause endorsed by the Commission in its *October 1995 decision* was in the following terms:

"Majority Clause:

This award applies in a limited way if employees covered by it are a minority of employees in an individual enterprise.

X.1 Employees covered by this award are a minority of employees in an individual enterprise if:

X.1.1 their employer's main business of undertaking is other than [insert description of minority work]; and

X.1.2 the majority of their employer's employees are covered by an award made, or an agreement approved, by the Australian Industrial Relations

Commission or a State arbitrator.

X.2 If employees covered by this award are a minority of employees, then:

X.2.1 the award or agreement that applies to the majority of their employer's employees applies to them as a result of this clause to the extent that the award deals with allowable award matters and provisions incidental to such matters and necessary for the effective operation of the award; and

X.2.2 the following provisions of this award will continue to apply to them and will override any conflicting provisions in the award or agreement that apply to the majority of the employer's employees:

(Then list the terms of this award that are to continue to apply to the employees who are a minority of the employees in an individual enterprise)."

In our view the observations made in the *October 1995 decision* regarding majority clauses remain relevant. We have added the underlined words to confine the application of the clause to allowable award matters. As part of the award simplification process the Commission will, where appropriate include a majority clause in multiple-industry awards. As the Hospitality Award only applies to the hospitality industry it is unnecessary to include a majority clause in it.

In the context of our review of the Hospitality Award the following changes are proposed pursuant to Items 49(7)(b) and (c):

- o clause 10 - Work Organisation, of the proposed award states:

"10.1 Employees must undertake duties as directed within the limits of their competence.

10.2 Despite the recognition of five career path streams, such streams do not prevent employees undertaking duties across different streams."

- o clause 14.2.1 of the award has been deleted. It states:

"Any bar attendant or cellarman shall not be required to scrub or wash floors or tables; such work shall be performed by the useful."

Facilitative Provisions

Item 49(8)(a) of the WROLA Act provides that the Commission must determine whether or not the award, where appropriate:

"contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply".

In its *September 1994 Review decision* the Commission defined facilitative provisions as:

" . . . that part of an award clause which enables agreement at enterprise level to determine the manner in which that clause is applied at the enterprise. A facilitative provision normally provides that the standard approach in the award provision may be departed from by agreement between an individual employer and an employee or the majority of employees in an enterprise or part of the enterprise concerned. Where an award clause contains a facilitative provision it establishes both the standard award condition and the framework within which agreement can be reached as to how the particular clause should be applied in practice." [Print L5300 at 30]

- the proceedings before us no party submitted that this definition required amendment and we think it is still appropriate. In practice, a facilitative provision introduces flexibility in the application of a particular allowable matter without changing the level of the entitlement provided.

Examples of facilitative provisions in the proposed Hospitality Award are:

- "*Hours of work*" - subject to a number of conditions an employee and the employer may agree on the arrangement for working an average of 38 hours per week [clause 26].
- "*Overtime*" - an employee and the employer may agree to take time off instead of payment for overtime at a time or times agreed with the employer. This agreement must be in writing and the employee must take the time off within four weeks of working the overtime. The amount of time off is to be equivalent to the pay the employee would have otherwise received for working the overtime [clause 28.7].
- "*Annual leave*" - an employee and the employer may reach an agreement about when the employee is to take annual leave [clause 30].
- "*Payment of wages*" - by agreement between the employer and the majority of employees in a workplace, in a week where a holiday occurs payment of wages may be made on a Friday [clause 21.1].
- "*Make-up time*" - the employer and a majority of employees may agree to introduce make-up time. Make-up time means an arrangement under which an employee takes time off during his or her ordinary hours of work and makes up that time later. If an employer intends to introduce make-up time and the Union has members at the particular workplace, the employer must inform the Union of its intention and provide the Union with an opportunity to participate in negotiations relating to make up time. *Make up time* arrangements must comply with certain conditions and the employer must record the arrangement in the time and wages records kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations* [clause 26.4].
- its *October 1995 Third Safety Net Adjustment & Section 150A Review decision* the Commission provided guidelines about the nature and extent of facilitative provisions [Print M5600 at 27-30]. A number of parties before us submitted that these guidelines should be amended because of the new legislative framework. The Joint Governments submitted that as part of the award review process:
 - the Commission's definition of facilitative provisions should continue to apply;
 - consistent with the safety net focus of awards facilitative provisions should operate by the agreement of a majority of employees, or individual employees, as appropriate, without a requirement for union consultation or consent;
 - in the event that the parties cannot agree on the nature or inclusion of a facilitative provision, the issue should be determined by arbitration;
 - wherever practicable, award provisions should be expressed in a facilitative way and the parties would have to establish that it is inappropriate to deal with a particular matter facilitatively; and
 - existing facilitative provisions should be varied for consistency with this approach.
- employers submitted that there was no statutory basis for three of the safeguards or protections in the *October 1995 Safety Net Review decision*, namely:
 - a requirement that majority agreement take place to endorse a system of individual agreement being introduced;
 - the union be provided with a reasonable opportunity to participate in negotiations if it was both a party to the award and had members in the

- enterprise;
 - o the time and wages book required to be kept by Regulations 131A - 131R be used to record both the majority decision to introduce the individual flexibility system and each individual use of it.
 - LTU broadly supported the retention of the *October 1995* guidelines.
 - think that the approach adopted by the Commission to the insertion of facilitative provisions into awards should reflect the fact that changes made through such clauses are not subject to Commission scrutiny. The nature and extent of the facilitative provisions in a particular award should take into account the circumstances in the industry covered by the award and the history of any existing facilitative provisions. For example in an industry in which employees have little or no bargaining capacity a more cautious approach may be warranted.
 - wish to make five general points to assist the parties in the award review process:
 - Facilitative provisions should not be a device to avoid award obligations, nor should they result in unfairness to the employees covered by the award.
 - Facilitative provisions provide for agreement at the workplace level about the manner in which a particular award provision is to be applied. Such agreements may be between:
 - o the employer and an employee; or
 - o the employer and a majority of employees at the workplace. Once such an agreement has been reached, the particular form of flexibility agreed may be utilised by agreement between the employer and an individual employee.
 - To ensure that a facilitative provision operates fairly, the Commission may prescribe safeguards including provisions:
 - o which require that the implementation of facilitative arrangements be recorded in the time and wages records kept by the employer pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*;
 - o for the notification of unions party to the relevant award who have members employed at the particular enterprise of the intention to utilise the facilitative provision and providing such unions with a reasonable opportunity to participate in 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;
 - o for a monitoring process under which a particular facilitative provision is reviewed, after a reasonable period, to consider its impact in practice.
4. The safeguards, if any, provided in respect of a particular facilitative provision will depend on the nature of the provisions sought and the circumstances of the particular industry.
5. Facilitative provisions should be used to promote the efficient performance of work at the enterprise level and to avoid the prescription of matters in unnecessary detail.

Regular Part-time Work

Item 49(8)(b) of the WROLA Act provides that the Commission must review the award to determine that, where appropriate, "*it contains provisions enabling the employment of regular part-time employees*".

Part-time employment is an allowable award matter [s.89A(2)(r) of the WR Act]. Section 89A(4) provides that the Commission's power to make or vary an award in relation to part-time work does not include:

"(a) the power to limit the number or proportion of employees that an employer may employ in a particular type of employment; or

(b) the power to set maximum or minimum hour of work for regular part-time employees."

Section 89A(5) provides that the limitation in s.89A(4)(b) does not prevent the Commission from including in an award:

"(a) provisions setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work; or

(b) provisions facilitating a regular pattern in the hours worked by regular part-time employees."

The part-time work provisions in the Hospitality Award have been reviewed to bring them into conformity with the WR Act. This process has included the deletion of clauses 16.3.1(a) and (b) which set out minimum and maximum hours of work for regular part-time employees. The following definition of a regular part-time employee has been inserted into the proposed award:

"15.3.2 A regular part-time employee is an employee who:

(a) works less than full-time hours of 38 per week; and

(b) has reasonably predictable hours of work; and

(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work."

Proposed clause 15.3.6 provides that an employee who does not meet the definition of a regular part-time employee and who is not a full-time employee must be paid as a casual.

Plain English

Item 49(8)(c) of the WROLA Act provides the Commission must determine whether or not the award *"is expressed in plain English and is easy to understand in both structure and content"*.

In its *October 1995 Review decision* the Commission dealt with a similar requirement in s.150A(2)(d) of the *Industrial Relations Act 1998* (the IR Act) in the following way:

"Plain English is, in our view, clear and precise language which is easy to understand which communicates its message effectively. It is not a simplified form of English. It puts the reader first and avoids archaic words, jargon, unnecessary technical expressions and complex language. Plain English is not just about words. It means using plain language to express ideas so that they make sense to the reader and designing documents so that information is easy to find and understand. As awards impose obligations and confer rights on employers and employees it is important that they are as clear and as easy to understand as the subject matter allows. Using plain English does not mean sacrificing precision. Its use will help employers and employees to understand the awards which affect their working relationship." [Print M5600 at 36]

We endorse this statement.

We agree with the Joint Governments' submission that the Commission's "*Making Federal Awards Simpler*" s.150A resource book provides a useful guide to expressing award provisions in plain English and making them easy to understand. The material set out at Chapter 4 of the resource book includes:

- determining award titles in a consistent way;
- grouping related items together (e.g. grouping all provisions in relation to leave of absence, such as personal leave, annual leave and jury service etc.);
- the logical listing of clauses and subclauses within each part and adopting a consistent system of numbering; and
- standardising wages clauses so that the classification, wage group (if applicable) and rates of pay appear together.

Obsolete Provisions and Updating

Item 49(8)(d) of the WROLA Act provides that the Commission must review the award to determine whether or not it "*contains provisions that are obsolete or that need updating*".

In its *Third Safety Net Adjustment and Section 150A Review decision* the Commission said that an obsolete provision was one which was "*designed to cover circumstances that are no longer applicable*". [Print M5600 at 41]

A range of provisions has been inserted in awards over time to deal with a particular circumstance, event or project that is no longer relevant and should be deleted. In the context of the Hospitality Award we have decided that the following provisions are obsolete:

- clause 19.4 - Supplementary payments;
- clauses 19.5.1 - 19.5.3 - Arbitrated safety adjustment;
- clause 20.1.1 - Weekend penalty rates - savings provision; and
- clause 37 - Training.

The question of whether or not a particular award provision is obsolete is a question of fact. In the absence of agreement between the award parties, evidence is required to establish that a provision is obsolete. Clauses 16.4.6 and 16.4.7 of the Hospitality Award deal with proficiency payments for apprentices. The employers submitted that the provisions were obsolete. The LTU disagreed. There was insufficient material before us to conclude that these provisions were obsolete.

In deciding whether an award needs updating, consideration will need to be given to whether it has been varied to incorporate safety net adjustments and relevant test case standards. Examples of test case standards include those relating to:

- enterprise flexibility provisions;
- personal/carer's leave;
- national training wage;
- parental leave;
- public holidays;
- superannuation;

- o supported wage for people with disabilities; and
- o termination, change and redundancy.

Where a disagreement exists as to whether a claim involves a test case standard, those asserting that it does must make and justify an application pursuant to s.107 of the IR Act. It will then be a matter for the President to decide whether the claim should be dealt with by a Full Bench.

Trainee Wages and Supported Wage System

Item 49(8)(e) of the WROLA Act provides that the Commission must review the award to determine that, where appropriate, *"it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities"*. We would expect the Commission's model clause to continue to apply consistent with our comments on clause 16.6 of the Hospitality Award.

Discrimination

Item 49(8)(f) of the WROLA Act provides that the Commission must review the award to ensure that:

"it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin".

Discrimination issues are dealt with elsewhere in this decision.

Section 89A(8) provides:

*"(8) Nothing in this section prevents the Commission from including a model anti-discrimination clause in an award.
Note: a model anti-discrimination clause was established by the Commission in the Full Bench decision dated 9 October 1995 [Print M5600]."*

We have made some minor amendments to the model anti-discrimination clause. The new model clause is:

"13. ANTI-DISCRIMINATION

13.1 *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, natural extraction or social origin.*

13.2 *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.*

13.3 Nothing in this clause is taken to affect:

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

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

13.3.3 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;

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

OTHER ISSUES

A number of Item 49 applications were earlier this year referred to a Full Bench and remain to be dealt with, those applications concern the:

1. Graphic Arts - General - Interim Award 1995;
2. The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995;
3. Shop, Distributive and Allied Employees Association - Victorian Shops Interim Award 1994;
4. Shop, Distributive and Allied Employees Association (Food and Liquor Stores) Interim Award 1994;
5. Shop, Distributive and Allied Employees Association (Booksellers and Stationers) Interim Award 1994;
6. Nurses (ANF - WA Private Hospitals and Nursing Homes) Consolidated Award 1991;
7. Collins Finance and Management Pty Ltd (Sizzler Restaurant) Employees Interim Award 1997;
8. Teachers (Victorian Government Schools - Interim) Award, 1994; and
9. Teachers' (Victorian Government Schools) Conditions of Employment Award, 1995.

The President will reconstitute the Full Bench in each of these matters and they will be called on for mention and further programming in the new year.

At the time we reserved our decision in this matter, McDonald C had not completed the task of taking evidence in that part of the employers' application which sought a reduction in penalty rates in the Hospitality Award. This Full Bench will sit in Melbourne at 10 a.m. on 23 February 1998 to hear the parties' oral submissions. The AHA is directed to file and serve on the other parties its written submissions on or before 12 February 1998. The LTU is directed to file and

serve on the other parties its written submissions on or before 19 February 1998.

BY THE COMMISSION:

PRESIDENT

ATTACHMENT A

WORKPLACE RELATIONS ACT 1996

- SECTION 89A

89A Scope of industrial disputes

Industrial dispute normally limited to allowable award matters

(1) For the following purposes, an industrial dispute is taken to include only matters covered by subsections (2) and (3):

- (a) dealing with an industrial dispute by arbitration;
- (b) preventing or settling an industrial dispute by making an award or order;
- (c) maintaining the settlement of an industrial dispute by varying an award or order.

Allowable award matters

(2) For the purposes of subsection (1) the matters are as follows:

- (a) classifications of employees and skill-based career paths;
- (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
- (c) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system;
- (d) piece rates, tallies and bonuses;
- (e) annual leave and leave loadings;

- (f) long service leave;
- (g) personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
- (h) parental leave, including maternity and adoption leave;
- (i) public holidays;
- (j) allowances;
- (k) loadings for working overtime or for casual or shift work;
- (l) penalty rates;
- (m) redundancy pay;
- (n) notice of termination;
- (o) stand-down provisions;
- (p) dispute settling procedures;
- (q) jury service;
- (r) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;
- (s) superannuation;
- (t) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

(3) The Commission's power to make an award dealing with matters covered by subsection (2) is limited to making a minimum rates award.

Limitations on Commission's Powers

(4) The Commission's power to make or vary an award in relation to matters covered by paragraph (2)(r) does not include:

- (a) the power to limit the number or proportion of employees that an employer may employ in a particular type of employment; or

(b) the power to set maximum or minimum hours of work for regular part-time employees.

(5) Paragraph (4)(b) does not prevent the Commission from including in an award:

(a) provisions setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work; or

(b) provisions facilitating a regular pattern in the hours worked by regular part-time employees.

(6) The Commission may include in an award provisions that are incidental to the matters in subsection (2) and necessary for the effective operation of the award.

Exceptional matters may be included in industrial dispute

(7) Subsection (1) does not exclude a matter (the exceptional matter) from an industrial dispute if the Commission is satisfied of all the following:

(a) a party to the dispute has made a genuine attempt to reach agreement on the exceptional matter;

(b) there is no reasonable prospect of agreement being reached on the exceptional matter by conciliation, or further conciliation, by the Commission;

(c) it is appropriate to settle the exceptional matter by arbitration;

(d) the issues involved in the exceptional matter are exceptional issues;

(e) a harsh or unjust outcome would apply if the industrial dispute were not to include the exceptional matter.

Anti-discrimination clause

(8) Nothing in this section prevents the Commission from including a model anti-discrimination clause in an award.

Note: A model anti-discrimination clause was established by the Commission in the Full Bench decision dated 9 October 1995 (print M5600).

Interpretation

(9) In this section, **outworker** means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

AMENDMENT ACT 1996

- ITEMS 46 TO 54 OF PART 2 OF SCHEDULE 5

Part 2 -Transitional provisions

46 Interpretation

In this Part:

interim period means the period of 18 months beginning on the day on which section 89A of the Principal Act commences.

Principal Act means the Workplace Relations Act.

special consent provisions has the meaning given by item 48.

termination time, in relation to special consent provisions, means the end of the period that is specified in the award under section 147 of the Principal Act.

47 Exercise of Commission's powers under this Part

In exercising its powers under this Part, the Commission is to have regard to the desirability of assisting parties to awards to agree on appropriate variations to their awards, rather than have parts of awards cease to have effect under item 50 at the end of the interim period.

48 Special consent provisions

For the purposes of this Part, *special consent provisions* are provisions of an award that give effect to a decision of the Commission that is expressed to be made in accordance with one or more of the following principles:

(a) the Enterprise Bargaining Principle adopted by the Commission in the National Wage Case decision of October 1991 (Dec 1150/91, Print K0300);

(b) the Enterprise Awards Principle adopted by the Commission in its Review of the Wage Fixing Principles decision of October 1993 (Dec 1300/93, Print K9700);

(c) Principle 2.2 (Consent Award or Award Variation to Give Effect to an Enterprise Agreement), adopted by the Commission in its Review of the Wage Fixing Principles decision of August 1994 (Dec 1408/94, Print L4700) and incorporated without amendment in wages principles established by the Commission in its Safety Net Adjustment & Section 150A Review decision of October 1995 (Dec 2120/95, Print M5600).

49 Variation of awards during the interim period

- (1) If one or more of the parties to an award apply to the Commission for a variation of the award under this item, the Commission may, during the interim period, vary the award so that it only deals with allowable award matters.
- (2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.
- (3) Special consent provisions cannot be varied under this item before the termination time for those provisions.
- (4) The Commission may only deal with the application by arbitration if it is satisfied that the applicant or applicants have made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters.
- (5) If:
 - (a) the award provides for rates of pay that, in the opinion of the Commission:
 - (i) are not operating as minimum rates; or
 - (ii) were made on the basis that they were not intended to operate as minimum rates; and
 - (b) the application under this item seeks to have such rates of pay varied so that they are expressed as minimum rates of pay;

the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.
- (6) If the Commission varies the award under subitem (5), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.
- (7) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
 - (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
 - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
 - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (8) The Commission must also review the award to determine whether or not it meets the following criteria:

- (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
 - (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
 - (c) it is expressed in plain English and is easy to understand in both structure and content;
 - (d) it does not contain provisions that are obsolete or that need updating;
 - (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
 - (f) it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (9) If the Commission determines that the award does not meet the criteria set out in subitem (7) or (8), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

50 Parts of awards cease to have effect at the end of the interim period

- (1) At the end of the interim period , each award ceases to have effect to the extent that it provides for matters other than allowable award matters.
- (2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.
- (3) For the purposes of this item, an award that is made under subsection 170MX(3) of the Principal Act is taken to provide wholly for allowable award matters.
- (4) If the termination time for special consent provisions is after the end of the interim period , then this item and item 51 apply to the special consent provisions as if a reference to the end of the interim period were instead a reference to the termination time.

51 Variation of awards after the end of the interim period

- (1) As soon as practicable after the end of the interim period, the Commission must review each award:
 - (a) that is in force; and
 - (b) that the Commission is satisfied has been affected by item 50.
- (2) The Commission must vary the award to remove provisions that ceased to have effect under item 50.

- (3) When varying the award under subitem (2), the Commission may also vary the award so that, in relation to an allowable award matter, the award is expressed in a way that reasonably represents the entitlements of employees in respect of that matter as provided in the award as in force immediately before the end of the interim period.
- (4) If, immediately before the end of the interim period, the award provided for rates of pay that, in the opinion of the Commission:
- (a) were not operating as minimum rates of pay; or
 - (b) were made on the basis that they were not intended to operate as minimum rates; the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.
- (5) If the Commission varies the award under subitem (4), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.
- (6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
 - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
 - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (7) The Commission must also review the award to determine whether or not it meets the following criteria:
- (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
 - (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
 - (c) it is expressed in plain English and is easy to understand in both structure and content;
 - (d) it does not contain provisions that are obsolete or that need updating;
 - (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
 - (f) it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(8) If the Commission determines that the award does not meet the criteria set out in subitem (6) or (7), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

52 Corporations not bound by State awards

(1) If:

- (a) a constitutional corporation is bound by an award in respect of an employee; and
- (b) the award is varied under subitem 49(1) or wholly or partly ceases to have effect because of item 50; and
- (c) as a result of the award being varied, or ceasing to have effect, as mentioned in paragraph (b), the corporation would (apart from this item) become bound by a State award in respect of the employee;

then the corporation is not bound by the State award in relation to the employee unless it becomes bound as a result of an application by the corporation to the relevant State industrial authority.

(2) Subitem (1) does not operate so that a State award, or part of a State award, prevails over an award of the Commission.

53 Matters to be dealt with by Full Bench

(1) After the commencement of this Part, a Full Bench may establish principles about varying awards under this Part.

(2) After such principles (if any) have been established, the power of the Commission to vary an award under this Part is exercisable only by a Full Bench unless the contents of the award:

- (a) give effect to determinations of a Full Bench under this Part; or
- (b) are consistent with principles established by a Full Bench under this item.

54 Certain provisions not discriminatory

(1) A provision of an award does not discriminate against an employee for the purposes of paragraph 49(8)(f) or 51(7)(f) merely because:

- (a) it provides for a junior rate of pay; or
- (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or

(c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:

(i) on the basis of those teachings or beliefs; and

(ii) in good faith.

(2) Paragraph (1)(a) does not apply to a decision or determination made by the Commission under this Part more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.

ATTACHMENT B

PERSONAL LEAVE MODEL FRAMEWORK CLAUSE

1. Amount of Paid Personal Leave

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

- o personal illness or injury (sick leave); or
- o 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
- o bereavement on the death of an immediate family or household member (bereavement leave).

1.2(i) Personal leave of:

- *[sum of current sick leave plus bereavement leave award entitlement]* will be available in the first year of service;
- *[sum of current sick leave plus bereavement leave award entitlement]* will be available per annum in the second and subsequent years of service.

1.2(ii) In any year unused personal leave accrues at the rate of the lesser of:

(a) [current award sick leave entitlement] less the amount of sick leave taken from the current year's personal leave entitlement in that year; or

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

1.2(iii) Personal leave may accumulate to a maximum of *[insert current award maximum sick leave accumulation limit]*.

2. Immediate Family or Household

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

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

2.1(ii) a member of the employee's household.

2.2 The term "*immediate family*" includes:

2.2(i) 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

2.2(ii) 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.

3. Sick Leave

3.1 An employee is entitled to use up to [*current award entitlement*] of the current year's personal leave entitlement as sick leave in the first year of service and [*current award entitlement*] in the second and subsequent years of service.

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.

3.3 [*insert any notice, certification etc. provisions*]

4. Bereavement Leave

4.1 An employee is entitled to use up to [*current award entitlement*] personal leave as bereavement leave [*on each occasion/annually as prescribed in existing award*].

4.2 Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to [*current award entitlement*] unpaid bereavement leave.

4.3 [*insert any provisions for overseas deaths, notifications, proof of death etc.*]

5. Carer's Leave

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

5.2 [insert requirements regarding proof, notification etc]

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

ATTACHMENT C

ANNOTATED PROPOSED CLAUSE 31 - PERSONAL LEAVE

	Comments
31. PERSONAL LEAVE	Model clause 1.1
31.1 Amount of paid personal leave	Model clause 1.2 and current award clauses 33A.1 and 33A.4.1
31.1.1 Paid personal leave is available to an employee when he or she is absent due: <ul style="list-style-type: none"> o to personal illness or injury (sick leave); or o 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 o because of bereavement on the death of an immediate family or household member (bereavement leave). 	See current award clauses 31.6 and 32.1 Note: The two day bereavement leave entitlement has been converted to 16 hours.
31.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:	Model clause 1.2(ii) and see current award clause 33A.3.4
Length of time worked for the Personal <u>employer leave</u>	Model clause 1.2(iii) and current award clause 31.8.2
(hours)	
Less than 1 month 16 1 month to less than 3 months 32 3 months to less than 6 months 48 6 months to less than 12 months 92 Each year thereafter 92	

31.1.3 In any year unused personal leave accrues by the lesser of:

31.1.3(a) 76 hours less the number of hours of sick leave taken during the year; or

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

	Comments
<p>31.1.4 Personal leave may accumulate to a maximum of 760 hours.</p>	Model clause 2 and current award clause 33A.2
<p>31.2 Immediate family or household</p>	
<p>31.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:</p>	Current award clauses 31.1 and 31.2
<p>31.2.1(a) a member of the employee's immediate family; or</p>	Model clause 3.1 and current award clauses 31.6 and 33A.3.1
<p>31.2.1(b) a member of the employee's household.</p>	
<p>31.2.2 The term immediate family includes:</p>	
<p>31.2.2(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</p>	
<p>31.2.2(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.</p>	
<p>31.3 Sick leave</p>	

31.3.1 Definition

Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of his or her personal illness or injury.

31.3.2 Entitlement

31.3.2(a) The amount of sick leave an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

	Comments
<p>Length of time worked Rate of accrual of <u>for the employer paid sick leave</u></p> <p>Less than 1 month 0 1 month to less than 3 months 16 3 months to less than 6 months 32 6 months to less than 12 months 76 Each year thereafter 76</p> <p>31.3.2(b) After the first six months of service, an employee must be paid for any sick leave to which he or she was not entitled, due to insufficient service, up to a maximum of 76 hours.</p> <p>31.3.2(c) Accumulated personal leave may be used for sick leave if the current sick leave entitlement is exhausted.</p>	<p>Current award clause 31.6</p> <p>Current award clause 33A.3.3</p> <p>Model clause 3.3 and current award clause 31.3</p> <p>Model clause 3.3 and see AHA draft clause 30.3.5</p>
31.3.3 Employee must give notice	

31.3.3(a) Before taking sick leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.

31.3.3(b) The notice must include:

- the nature of the injury or illness (if known); and
- how long the employee expects to be away from work.

31.3.3(c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

31.3.4 Evidence supporting claim

The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, that the employee was unable to work because of injury or personal illness.

	Comments
<p>31.3.5 The effect of workers' compensation</p> <p>If an employee is receiving workers' compensation payments, he or she is not entitled to sick leave.</p>	<p>See current award clause 31.5</p>
<p>31.4 Bereavement leave</p>	<p>Model clause 4.1 and current award clauses 32.1 and 33A.4. Also note AHA draft clause 30.4.1</p>
<p>31.4.1 Paid leave entitlement</p> <p>An employee other than a casual is entitled to use up to two days personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household in Australia dies.</p>	<p>Model clause 4.2 and current award clause 33A.4.4</p> <p>Model clause 4.3 and</p>

31.4.2 Unpaid leave entitlement

Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, he or she is entitled to up to two days unpaid bereavement leave.

AHA draft clause
30.4.2

Model clause 5.1 and
current award clauses
33A.5.1 and 33A.5.4

31.4.3 Evidence supporting claim

The employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household

31.5 Carer's leave

31.5.1 Paid leave entitlement

An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

	Comments

<p>31.5.2 Notice required</p> <p>31.5.2(a) Before taking carer's leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.</p> <p>31.5.2(b) The notice must include:</p> <ul style="list-style-type: none"> ○ the name of the person requiring care and support and his or her relationship to the employee; ○ the reasons for taking the leave; and ○ the estimated length of absence. <p>31.5.2(c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.</p>	<p>Model clause 5.2 and current award clause 33A.5.5</p> <p>Amended to make consistent with notice provision in relation to sick leave</p> <p>Existing clause 33A.5.3</p> <p>Model clause 5.3 and current award clause 33A.6</p>
<p>31.5.3 Evidence supporting claim</p> <p>The employee must, if required by the employer, 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.</p>	
<p>31.5.4 Unpaid leave</p> <p>An employee may take unpaid carer's leave by agreement with the employer.</p>	

ATTACHMENT D

ALLOWABLE MATTERS/INCIDENTAL AND NECESSARY TABLE

(See Principle 9)

This table refers to provisions in the current and proposed Hospitality Award which we have determined are allowable or incidental and necessary. The

determination of whether or not an award provision is incidental to an allowable award matter and necessary for the effective operation of the award may depend on the circumstances in a particular case.

s.89A(2)(a) Classifications of employees and skill-based career paths

- lists of classification and classification structures, covering the definitions of and duties to be performed by each classification;
- competency and qualification standards for classification structures;
- provisions enabling flexibility in the application of the classification structure (such as provisions regarding multi-skilling);
- provisions which enable the employer to broadly determine where former classifications would fit into a new classification structure e. g. translation from old to new structures (as long as they are relevant) and automatic progression;
- mixed functions clause;
- higher paid employees may relieve lower paid employees without loss of pay.

s.89A(2)(b) Ordinary time hours of work and the times which in which they are performed, rest breaks, notice periods, and variations to working hours

- span of hours attracting ordinary time payment and any exemptions for particular classifications or type of employee;
- the number of hours in a time span/s (e.g. weekly, monthly or shift arrangements) which attract ordinary time payment;
- maximum daily hours attracting ordinary time payment;
- notification of hours/rosters and provisions to change hours/ rosters;
- provision for rostered days off;
- make up time arrangements;
- provision for meal breaks, minimum length of meal breaks and penalty arrangements to apply in the absence of a meal break;
- rest breaks (i.e. during ordinary time hours), crib breaks (i.e. during overtime) and breaks between shifts;
- payment for waiting time where employees are paid their wages at any time other than during their working time.

s.89A(2)(c) Rates of pay generally (such as hourly rates and annual salaries), rates of pay for junior trainees or apprentices, and rates of pay for employees under the supported wage system

- minimum wage rates (including for juniors, trainees and apprentices), increments, supplementary payments and safety net adjustments (as long as they are relevant);
- mixed function payments;
- process and procedures for the determination of age;
- juniors paid as adults;
- eligibility for supported wage including provisions for assessing an employee's productivity capacity;
- provisions for work trials as part of a supported wage arrangement including induction or training appropriate to the job being trailed;
- provision for payment of wages;
- manner of payment of wages e.g. wages to be paid in cash, by cheque or by electronic funds transfer;
- payments for when work not performed;

- deductions from wages.

s.89A(2)(e) Annual leave and leave loadings

- the quantum of the leave entitlement and of the loading;
- defining service for the purpose of calculating the leave entitlement;
- when and how the leave entitlement may be taken;
- the effect on the leave entitlement of certain absences from the workplace;
- payment provisions including for the leave period, the loading and on termination.

s.89A(2)(g) Personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave

- quantum of leave entitlement;
- accrual provisions including any limitation on accrual;
- access to accrued entitlements;
- conditions on access to entitlements e.g. carer's leave is for the purpose of caring for an immediate family or household member who is sick and requires the employee's care and support;
- notice requirements;
- evidence supporting claims;
- effect of workers compensation payments on entitlements;
- unpaid leave;
- time off during notice period;
- leave for consultative meetings to discuss industrial matters.

s.89A(2)(h) Parental leave including maternity and adoption leave

- quantum of leave entitlements;
- eligibility requirements;
- notice requirements;
- evidence supporting claims;
- interaction of parental leave and other leave entitlements;
- variations to parental leave;
- transfer to a safe job;
- returning to work after a period of parental leave;
- replacement employees.

s.89A(2)(i) Public holidays

- identification of holidays;
- provision for substitute days;
- payment for working on a public holiday;
- minimum payments for public holiday work;
- absence before or after a public holiday;
- time off instead of public holiday penalty rate.

s.89A(2)(j) Allowances

- provision for payment in addition to minimum rates of pay for:
 - disabilities, responsibility and skill; or
 - the reimbursement of expenses;
- requirements for employees to sign a receipt for clothing or equipment provided by their employer;
- accident pay.

s.89A(2)(k) Loadings for working overtime or for casual work or shift work

Overtime work

- definition of overtime, the basis for its calculation and the level of overtime loadings;
- minimum payments;
- overtime payments when an employee swaps shifts;
- provision for rest periods and payment for working during a meal break;
- time off in lieu of payment for overtime.

Casual loadings

- provision for and level of loading for ordinary work;
- provision for additional loading for working outside of ordinary hours.

Shiftwork

- provision for and level of loading and definition of shifts.

s.89A(2)(l) Penalty rates

- o provision for penalty payments and the rates applicable for work performed at specified times of the day or on certain days of the week;
- o penalty rates not cumulative.

s.89A(2)(m) Redundancy pay

- o definition of redundancy;
- o transfer to lower paid duties;
- o severance pay entitlements;
- o acceptable alternative employment;
- o deductions from severance pay due to superannuation benefits;
- o exemption from severance pay e.g. termination due to misconduct, traineeships, incapacity to pay.

s.89A(2)(n) Notice of termination

- o period of notice required on termination;
- o payment instead of notice;
- o exemption from notice provisions e.g. termination due to misconduct, traineeships;
- o employers right to withhold monies due to an employee if the employee fails to give the required notice.

s.89A(2)(o) Stand-down provisions

- o circumstances under which employees may be stood down and provision for deduction of wages;
- o exclusions from the stand-down arrangements;
- o effect on other entitlements;
- o employee rights in response.

s.89A(p) Dispute settling procedures

- o procedural matters such as:
 - hierarchy of dispute resolution steps;
 - final conciliating or determining authority;
 - continuation of work unless reasonable concern about an imminent risk to occupational health or safety;
 - timing for progressing particular stages;
 - representation.

s.89A(2)(q) Jury service

- provision for authorised absence from the workplace;
- eligibility criteria;
- make up of payment to ordinary time earnings level;
- notification to employer of the requirement to attend for jury service and proof of attendance, period of attendance and amount of reimbursement received from the court.

s.89A(2)(r) Type of employment, such as full-time employment, casual employment, regular part-time employment and shift work

- provision for and definitions of types of employment such as full-time, regular part-time and casual;
- requirement to inform each employee of the terms of their engagement and in particular whether they are full time, regular part time or casual;
- minimum consecutive hours to be worked by part-time and/or casual employees;
- provision for reasonably predictable hours of work including the process for their variation for part-time employees;
- provision for pro-rata employment conditions for part-time employees.

s.89A(2)(s) Superannuation

- reference to the relevant superannuation legislation;
- definition of ordinary time earnings;
- contribution to be made into a specified fund(s);
- eligibility;
- employer contributions;
- voluntary employee contributions;
- exemptions.

Other Matters

- machinery provisions such as:
 - title;
 - arrangement;
 - alphabetical index;
 - definitions;

- date the award starts;
- where and who the award covers;
- index of facilitative provisions;

- o model anti-discrimination clause;
- o enterprise flexibility provisions;
- o relationship to National Training Wage Interim Award;
- o posting of award in the workplace.

ATTACHMENT E

NON-ALLOWABLE MATTERS TABLE

(See Principle 9)

This table refers to provisions in the current Hospitality Award which we have determined are not allowable. The determination of whether or not an award provision is incidental to an allowable award matter and necessary for the effective operation of the award may depend on the circumstances in a particular case.

[The award clauses referred to are those in the current Hospitality Award]

s.89A(2)(a) Classifications of employees and skill-based career paths

- o statements of objectives or intent [clause 1A];
- o limitations on employment in particular classifications [clauses 16.4.8(b) and 16.5.3(a)(iii)].

s.89A(2)(k) Loadings for working overtime or for casual work or shift work

- o preference for the working of overtime rather than casual employment [clause 28.1].

s.89A(2)(m) Redundancy pay

- o notification and consultation on the introduction of change [clause 11];
- o requirement for discussions to take place prior to redundancies [clauses 17.1 and 17.10.1];
- o provisions requiring the employer to notify the CES in respect of impending redundancies [clause 17.7].

s.89A(2)(n) Notice of termination

- o provision that an employer shall not dismiss an employee on the grounds of refusal to dress in a manner which would cause that employee embarrassment [clause 14.1.2];
- o employee not to be given notice of termination while on authorised leave [clause 18.1.8];
- o requirement to provide employees with a statement of employment on termination [clause 18.4];
- o employer's right to summarily dismiss an employee in certain circumstances [clause 18.5.2];
- o provision that a termination of employment shall not be harsh, unjust or unreasonable [clause 18.6].

s.89A(2)(r) Type of employment, such as full-time employment, casual employment, regular part-time employment and shift work

- o a prohibition on employees being engaged as casuals in the hotel in which they are permanently employed [clause 16.1.3];
- o limitations on the number or proportion of employees that an employer may employ in a particular type of employment, such as quotas and ratios [clause 16.5.3(a)(iii)];
- o minimum or maximum hours of work for regular part-time employees other than minimum number of consecutive hours [clause 16.3.1].

Other Matters

- o a clause setting out the history of award changes [clause 8A];
- o standards for accommodation [clause 35.5];
- o provision by the employer for items or services such as clothing, tools, equipment, laundering and accommodation which are not in the nature of an allowance [clause 41];
- o provisions in relation to sexual harassment [clause 14.1];
- o a provision that employees not be required to clean or attend sanitary conveniences provided for the opposite sex except in certain circumstances [clause 14.2.2];
- o amenities [clause 40];
- o requirement to provide a first aid kit [clause 42];
- o preference to unionists [clause 45];
- o union officials [clause 47], but see Division 11A of Part IX of the WR Act.

ATTACHMENT F

**COMPARATIVE TABLE: CURRENT HOSPITALITY AWARD/
PROPOSED ORDER**

Current Award	Proposed Order	Comments

<p>PART 1 - APPLICATION AND OPERATION OF AWARD</p> <p>1. AWARD TITLE</p> <p>1.1 This award shall be known as The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995.</p>	<p>1. AWARD TITLE</p> <p>This award shall be known as The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1998.</p>	
<p>1A. PREAMBLE</p> <p>1A.1 The provisions of this award have been developed over time with the input of the employers, union and employees to develop an industry providing high standards of hospitality service, customer satisfaction and a reasonable and fair standard of wages and conditions for employers and employees in the industry.</p>	<p>[deleted]</p>	<p>Not allowable</p>
<p>2. ARRANGEMENT</p> <p>2.1 The award is arranged as follows:</p> <p style="text-align: center;"><i>[not reproduced here]</i></p>	<p>2. ARRANGEMENT</p> <p>This award is arranged as follows:</p> <ol style="list-style-type: none"> 1. Award title 2. Arrangement 3. Definitions 4. Date the award starts 5. Where and who the award covers 6. Who is bound by this award? 7. Application of Appendix A 8. Relationship with other awards 9. Enterprise flexibility provisions 10. Work organisation 11. Procedure to avoid industrial disputation 12. No deduction for breakages or cashiering underings 13. Anti-discrimination 14. Stand down of employees 15. Types of employment 16. Redundancy 17. Termination of employment 18. Classifications and wage rates 19. Penalty rates 	

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	<ul style="list-style-type: none"> 20. Mixed functions 21. Payment of wages 22. Option for annualised salary 23. Allowances 24. Broken periods of work 25. Superannuation 26. Hours of work 27. Breaks 28. Overtime 29. Roster 30. Annual leave 31. Personal leave 32. Parental leave 33. Jury service 34. Public holidays 35. Provision of employee accommodation and meals 36. Relationship to the National Training Wage Interim Award 1994 37. Accident pay 38. Posting of award 39. Leave for consultation meetings 40. Index of facilitative provisions <p>Appendix A</p>	
<p>2A. ANTI-DISCRIMINATION</p> <p>2A.1 It is the intention of the respondents to this award to achieve the principle object in section 3(g) of the <i>Industrial Relations Act 1988</i> 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.</p>	<p>[see clause 13]</p>	<p>Item 49(8)(c) and (d)</p>
<p>2A.2 Accordingly, in fulfilling their obligations under the disputes 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.</p>		

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<p>2A.3 Nothing in this clause is to be taken to affect:</p> <p>2A.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation:</p> <p>2A.3.2 until 22 June 1997, the payment of different wages for employees who have not reached a particular age;</p> <p>2A.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; or</p> <p>2A.3.4 the exemptions in sections 170DF(2) and (3) of the Act.</p>		
<p>3. DEFINITIONS</p>	<p>3. DEFINITIONS</p>	
<p>3.1 Food and Beverage</p>	<p>3.1 Food and beverage</p>	<p>Item 49(8)(c) and (d)</p>
<p>3.1.1 Food and beverage attendant grade 1 shall mean an employee who is engaged in any of the following:</p> <ul style="list-style-type: none"> (a) picking up glasses; (b) emptying ashtrays; (c) general assistance to food and beverage attendants of a higher grade not including service to customers; (d) removing food plates; (e) setting and/or wiping down tables; (f) cleaning and tidying of associated areas. 	<p>3.1.1 Food and beverage attendant grade 1 means an employee who is engaged in any of the following:</p> <ul style="list-style-type: none"> 3.1.1(a) picking up glasses; 3.1.1(b) emptying ashtrays; 3.1.1(c) general assistance to food and beverage attendants of a higher grade not including service to customers; 3.1.1(d) removing food plates; 3.1.1(e) setting and/or wiping down tables; 3.1.1(f) cleaning and tidying of associated areas. 	

3.1.2 Food and beverage attendant grade 2 shall mean an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

3.1.2 Food and beverage attendant grade 2 means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

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<p>(a) supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;</p> <p>(b) assisting in the cellar or bottle department;</p> <p>(c) undertaking general waiting duties of both food and/or beverage including cleaning of tables;</p> <p>(d) receipt of monies;</p> <p>(f) attending a snack bar;</p> <p>(g) engaged on delivery duties.</p>	<p>3.1.2(a) supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;</p> <p>3.1.2(b) assisting in the cellar or bottle department;</p> <p>3.1.2(c) undertaking general waiting duties of both food and/or beverage including cleaning of tables;</p> <p>3.1.2(d) receipt of monies;</p> <p>3.1.2(f) attending a snack bar;</p> <p>3.1.2(g) engaged on delivery duties.</p>	
<p>3.1.3 Food and beverage attendant grade 3 shall mean an employee who has the appropriate level of training and is engaged in any of the following:</p> <p>(a) supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;</p> <p>(b) assisting in the cellar or bottle department, where duties could include working up to four hours per day (averaged over the relevant work cycle) in the cellar without supervision;</p> <p>(c) undertaking general waiting duties of both food and liquor including cleaning of tables;</p> <p>(d) receipt and dispensing of monies;</p> <p>(e) engaged on delivery duties; or</p> <p>(f) in addition to the tasks performed by a food and beverage</p>	<p>3.1.3 Food and beverage attendant grade 3 means an employee who has the appropriate level of training and is engaged in any of the following:</p> <p>3.1.3(a) supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;</p> <p>3.1.3(b) assisting in the cellar or bottle department, where duties could include working up to four hours per day (averaged over the relevant work cycle) in the cellar without supervision;</p> <p>3.1.3(c) undertaking general waiting duties of both food and liquor including cleaning of tables;</p> <p>3.1.3(d) receipt and dispensing of monies;</p>	

attendant grade 2 the employee is also involved in:

(i) the operation of a mechanical lifting device; or

(ii) attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal.

3.1.3(e) engaged on delivery duties; or

3.1.3(f) in addition to the tasks performed by a food and beverage attendant grade 2 the employee is also involved in:

3.1.3(f)(i) the operation of a mechanical lifting device; or

3.1.3(f)(ii) attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal.

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<p>(g) and/or shall mean an employee who is engaged in any of the following:</p> <ul style="list-style-type: none"> · full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area); · mixing a range of sophisticated drinks; · supervising food and beverage attendants of a lower grade; 	<p>3.1.3(g) and/or means an employee who is engaged in any of the following:</p> <ul style="list-style-type: none"> · full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area); · mixing a range of sophisticated drinks; · supervising food and beverage attendants of a lower grade; 	

<ul style="list-style-type: none"> · taking reservations, greeting and seating guests; · training food and beverage attendants of a lower grade. 	<ul style="list-style-type: none"> · taking reservations, greeting and seating guests; · training food and beverage attendants of a lower grade. 	
<p>3.1.4 Food and beverage attendant (tradesperson) grade 4 shall mean an employee who has completed an apprenticeship in waiting or who has passed the appropriate trade test and as such carries out specialised skilled duties in a fine dining room or restaurant.</p>	<p>3.1.4 Food and beverage attendant (tradesperson) grade 4 means an employee who has completed an apprenticeship in waiting or who has passed the appropriate trade test and as such carries out specialised skilled duties in a fine dining room or restaurant.</p>	
<p>3.1.5 Food and beverage supervisor shall mean an employee who has the appropriate level of training including a supervisory course and who has the responsibility for supervision, training and co-ordination of food and beverage staff, or stock control for a bar or series of bars.</p>	<p>3.1.5 Food and beverage supervisor means an employee who has the appropriate level of training including a supervisory course and who has the responsibility for supervision, training and co-ordination of food and beverage staff, or stock control for a bar or series of bars.</p>	
	<p>3.1.6 Liquor service employee means a person employed to sell or dispense liquor in bars and/or bottle departments or shops and includes a cellar employee.</p>	
<p>3.2 Kitchen</p>	<p>3.2 Kitchen</p>	<p>Item 49(8) (c)</p>
<p>3.2.1 Kitchen attendant grade 1 shall mean an employee engaged in any of the following:</p> <ul style="list-style-type: none"> (a) general cleaning duties within a kitchen or food preparation area and scullery, including the cleaning of cooking and general utensils used in a kitchen and restaurant; (b) assisting employees who are cooking; (c) assembly and preparation of ingredients for cooking; or 	<p>3.2.1 Kitchen attendant grade 1 means an employee engaged in any of the following:</p> <ul style="list-style-type: none"> 3.2.1(a) general cleaning duties within a kitchen or food preparation area and scullery, including the cleaning of cooking and general utensils used in a kitchen and restaurant; 3.2.1(b) assisting employees who are cooking; 3.2.1(c) assembly and preparation of ingredients for cooking; or 	

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<p>(d) general pantry duties.</p> <p>3.2.1 Kitchen attendant grade 2 means an employee who has the appropriate level of training, and who is engaged in specialised non-cooking duties in a kitchen or food preparation area, or supervision of kitchen attendants.</p>	<p>3.2.1(d) general pantry duties.</p> <p>3.2.2 Kitchen attendant grade 2 means an employee who has the appropriate level of training, and who is engaged in specialised non-cooking duties in a kitchen or food preparation area, or supervision of kitchen attendants.</p>	
<p>3.2.2 Kitchen attendant grade 3 shall mean an employee who has the appropriate level of training including a supervisory course, and has the responsibility for the supervision, training and co-ordination of kitchen attendants of a lower grade.</p>	<p>3.2.3 Kitchen attendant grade 3 means an employee who has the appropriate level of training including a supervisory course, and has the responsibility for the supervision, training and co-ordination of kitchen attendants of a lower grade.</p>	
<p>3.2.3 Cook grade 1 means an employee who carries out cooking of breakfasts and snacks, baking, pastry cooking or butchering.</p>	<p>3.2.4 Cook grade 1 means an employee who carries out cooking of breakfasts and snacks, baking, pastry cooking or butchering.</p>	
<p>3.2.4 Cook grade 2 shall mean an employee who has the appropriate level of training and who performs cooking duties including baking, pastry cooking or butchering.</p>	<p>3.2.5 Cook grade 2 means an employee who has the appropriate level of training and who performs cooking duties including baking, pastry cooking or butchering.</p>	
<p>3.2.5 Cook (tradesperson) grade 3 shall mean a "commi chef" or equivalent who has completed an apprenticeship or who has passed the appropriate trade test, and who is engaged in cooking, baking, pastry cooking or butchering duties.</p>	<p>3.2.6 Cook (tradesperson) grade 3 means a "commis chef" or equivalent who has completed an apprenticeship or who has passed the appropriate trade test, and who is engaged in cooking, baking, pastry cooking or butchering duties.</p>	
<p>3.2.6 Cook (tradesperson) grade 4 shall mean a "demi chef" or equivalent who has completed an apprenticeship or has passed the appropriate trade test and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties and/or supervises and trains other cooks and kitchen employees.</p>	<p>3.2.7 Cook (tradesperson) grade 4 means a "demi chef" or equivalent who has completed an apprenticeship or has passed the appropriate trade test and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties and/or supervises and trains other cooks and kitchen employees.</p>	

3.2.7 Cook (tradesperson) grade 5 shall mean a "chef de partie" or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchering, baking or pastry cooking and has completed additional appropriate training who performs any of the following:

- (a) general and specialised duties including supervision or training of other kitchen staff;
- (b) ordering and stock control; or

3.2.8 Cook (tradesperson) grade 5 means a "chef de partie" or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchering, baking or pastry cooking and has completed additional appropriate training who performs any of the following:

- 3.2.8(a)** general and specialised duties including supervision or training of other kitchen staff;
- 3.2.8(b)** ordering and stock control; or

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(c) solely responsible for other cooks and other kitchen employees in a single kitchen establishment.

3.2.8(c) solely responsible for other cooks and other kitchen employees in a single kitchen establishment.

3.3 Guest Service

3.3 Guest service

Item 49(8)(c)

3.3.1 Guest service grade 1 shall mean an employee who performs any of the following:

- (a) laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;
- (b) the collection and delivery of guests personal dry cleaning and laundry, linen and associated materials to and from accommodation areas;
- (c) performs general cleaning duties; or
- (d) parking guest cars.

3.3.1 Guest service grade 1 means an employee who performs any of the following:

- 3.3.1(a)** laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;
- 3.3.1(b)** the collection and delivery of guests personal dry cleaning and laundry, linen and associated materials to and from accommodation areas;
- 3.3.1(c)** performs general cleaning duties; or
- 3.3.1(d)** parking guest cars.

3.3.2 Guest service grade 2 shall mean an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- (a) servicing accommodation areas and cleaning thereof;
- (b) receiving and assisting guests at the entrance to the establishment;
- (c) driving a passenger vehicle or courtesy bus;
- (d) transferring guests baggage to and from rooms;
- (e) assisting in the dry cleaning process;
- (f) cleaning duties using specialised equipment and chemicals;
or
- (g) providing butler services such as food, beverage and personalised guest service.

3.3.2 Guest service grade 2 means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- 3.3.2(a)** servicing accommodation areas and cleaning thereof;
- 3.3.2(b)** receiving and assisting guests at the entrance to the establishment;
- 3.3.2(c)** driving a passenger vehicle or courtesy bus;
- 3.3.2(d)** transferring guests baggage to and from rooms;
- 3.3.2(e)** assisting in the dry cleaning process;
- 3.3.2(f)** cleaning duties using specialised equipment and chemicals; or
- 3.3.2(g)** providing butler services such as food, beverage and personalised guest service.

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3.3.3 Guest service grade 3 shall mean an employee who has the appropriate level of training and who is engaged in any of the following:

- (a) supervising guest service employees of a lower grade;
- (b) providing butler services such as food, beverage and personalised guest service;
- (c) major repair of linen and/or clothing including basic tailoring and major alterations and refitting; or
- (d) dry cleaning.

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3.3.3 Guest service grade 3 means an employee who has the appropriate level of training and who is engaged in any of the following:

- 3.3.3(a)** supervising guest service employees of a lower grade;
- 3.3.3(b)** providing butler services such as food, beverage and personalised guest service;
- 3.3.3(c)** major repair of linen and/or clothing including basic tailoring and major alterations and refitting; or
- 3.3.3(d)** dry cleaning.

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3.3.4 Guest service grade 4 shall mean an employee who has completed an apprenticeship or who has passed the appropriate trade test or otherwise has the appropriate level of training to perform the work of a tradesperson in dry cleaning, tailoring or as a butler.

3.3.4 Guest service grade 4 means an employee who has completed an apprenticeship or who has passed the appropriate trade test or otherwise has the appropriate level of training to perform the work of a tradesperson in dry cleaning, tailoring or as a butler.

3.3.5 Guest service supervisor shall mean an employee with the appropriate level of training including a supervisory course, who supervises, trains and co-ordinates the work of employees engaged in a housekeeping department.	3.3.5 Guest service supervisor means an employee with the appropriate level of training including a supervisory course, who supervises, trains and co-ordinates the work of employees engaged in a housekeeping department.	
3.3.6 Front office grade 1 shall mean an employee who is engaged as an assistant in front office duties including night auditing, telephonist, receptionist, cashier, information services or reservations.	3.3.6 Front office grade 1 means an employee who is engaged as an assistant in front office duties including night auditing, telephonist, receptionist, cashier, information services or reservations.	
3.3.7 Front office grade 2 shall mean an employee who has the appropriate level of training and is in the front office engaged in telephonist, receptionist, cashier, information services or reservations.	3.3.7 Front office grade 2 means an employee who has the appropriate level of training and is in the front office engaged in telephonist, receptionist, cashier, information services or reservations.	
3.3.8 Front office grade 3 shall mean an employee who has the appropriate level of training and is in the front office engaged in duties including assisting in training and supervision of front office employees of a lower grade.	3.3.8 Front office grade 3 means an employee who has the appropriate level of training and is in the front office engaged in duties including assisting in training and supervision of front office employees of a lower grade.	
3.3.9 Front office supervisor shall mean an employee who has the appropriate level of training including a supervisory course and who supervises, trains and co-ordinates the work of front office employees.	3.3.9 Front office supervisor means an employee who has the appropriate level of training including a supervisory course and who supervises, trains and co-ordinates the work of front office employees.	

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3.4 Administration and general	3.4 Administration	Item 49(8)(c)
3.4.1 Clerical grade 1 shall mean an employee who is required to perform basic clerical and routine office duties such as collating, filing, photocopying, and delivering messages.	3.4.1 Clerical grade 1 means an employee who is required to perform basic clerical and routine office duties such as collating, filing, photocopying, and delivering messages.	
3.4.2 Clerical grade 2 shall mean an employee who is engaged in general clerical or office duties, such as typing, filing, basic data entry and calculating functions.	3.4.2 Clerical grade 2 means an employee who is engaged in general clerical or office duties, such as typing, filing, basic data entry and calculating functions.	

3.4.3 Clerical grade 3 shall mean an employee who has the appropriate level of training and who performs any of the following:

(a) operates adding machines, switchboard, paging system, telex machine, typewriter and calculator;

(b) uses knowledge of keyboard and function keys to enter and retrieve data through computer terminal;

(c) copy types at 25 words per minute with 98% accuracy;

(d) maintains mail register and records;

(e) maintains established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations;

(f) transcribes information into records, completes forms, takes telephone messages;

(g) acquires and applies a working knowledge of office or sectional operating procedures and requirements;

(h) acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate staff in different sections, relays internal information, responds to or redirects inquiries, greets visitors;

(i) keeps appropriate records;

3.4.3 Clerical grade 3 means an employee who has the appropriate level of training and who performs any of the following:

3.4.3(a) operates adding machines, switchboard, paging system, telex machine, typewriter and calculator;

3.4.3(b) uses knowledge of keyboard and function keys to enter and retrieve data through computer terminal;

3.4.3(c) copy types at 25 words per minute with 98% accuracy;

3.4.3(d) maintains mail register and records;

3.4.3(e) maintains established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations;

3.4.3(f) transcribes information into records, completes forms, takes telephone messages;

3.4.3(g) acquires and applies a working knowledge of office or sectional operating procedures and requirements;

3.4.3(h) acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate staff in different sections, relays internal information, responds to or redirects inquiries, greets visitors;

3.4.3(i) keeps appropriate records;

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(j) sorts, processes and records original source financial documents (e.g. invoices, cheques, correspondence) on a daily basis; maintains and records petty cash; prepares bank deposits and withdrawals and does banking;

(k) and who has the appropriate level of training and also performs any of the following:

- operates computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters;
- produces documents and correspondence using knowledge of standard formats, touch types at 40 words per minute with 98% accuracy, audio types;
- uses one or more software application package(s) developed for a micro/personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer;
- follows standard procedures or template for the preceding functions using existing models/fields of information. Creates, maintains and generates simple reports;
- uses a central computer resource to an equivalent standard;
- uses one or more software packages to create, format, edit, proof read, spell check, correct, print and save text documents, e.g. standard correspondence and business documents;
- takes shorthand notes at 70 wpm and transcribed with 95% accuracy;

3.4.3(j) sorts, processes and records original source financial documents (e.g. invoices, cheques, correspondence) on a daily basis; maintains and records petty cash; prepares bank deposits and withdrawals and does banking;

3.4.3(k) and who has the appropriate level of training and also performs any of the following:

- operates computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters;
- produces documents and correspondence using knowledge of standard formats, touch types at 40 words per minute with 98% accuracy, audio types;
- uses one or more software application package(s) developed for a micro/personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer;
- follows standard procedures or template for the preceding functions using existing models/fields of information. Creates, maintains and generates simple reports;
- uses a central computer resource to an equivalent standard;
- uses one or more software packages to create, format, edit, proof read, spell check, correct, print and save text documents, e.g. standard correspondence and business documents;
- takes shorthand notes at 70 wpm and transcribed with 95% accuracy;

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<ul style="list-style-type: none"> · arranges travel bookings and itineraries, makes appointments, screens telephone calls, follows visitor protocol procedures, establishes telephone contact on behalf of executive; · applies a working knowledge of the organisation's products/ services, functions, locations and clients; · responds to and acts upon most internal/external inquiries in own function area; · uses and maintains a computer-based record management system to identify, access and extract information from internal sources; maintains circulation, indexing and filing systems for publications, reviews files, closes files, archives files; · maintains financial records and journals, collects and prepares time and wage records; prepares accounts queries from debtors; posts transactions to ledger. 	<ul style="list-style-type: none"> · arranges travel bookings and itineraries, makes appointments, screens telephone calls, follows visitor protocol procedures, establishes telephone contact on behalf of executive; · applies a working knowledge of the organisation's products/ services, functions, locations and clients; · responds to and acts upon most internal/external inquiries in own function area; · uses and maintains a computer-based record management system to identify, access and extract information from internal sources; maintains circulation, indexing and filing systems for publications, reviews files, closes files, archives files; · maintains financial records and journals, collects and prepares time and wage records; prepares accounts queries from debtors; posts transactions to ledger. 	
<p>3.4.4 Clerical supervisor shall mean an employee who has the appropriate level of training including a supervisory course and who co-ordinates other clerical staff.</p>	<p>3.4.4 Clerical supervisor means an employee who has the appropriate level of training including a supervisory course and who co-ordinates other clerical staff.</p>	
	<p>3.5 Security</p> <p>3.5.1 Doorperson/security officer grade 1 means a person who assists in maintenance of dress standards and good order at an establishment.</p>	
	<p>3.5.2 Timekeeper/security officer grade 2 means a person who is responsible for timekeeping of staff, for the security of keys, for the checking in and out of delivery vehicles and/or for the supervision of doorperson/ security officer grade 1 personnel.</p>	
	<p>3.6 Leisure activities</p>	<p>Item 49(8)(c)</p>
	<p>3.6.1 Leisure attendant grade 1 means a person who acts as an assistant instructor, pool attendant and/or can be responsible for the setting up, distribution and care of equipment, and the taking of bookings.</p>	

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	<p>3.6.2 Leisure attendant grade 2 means a person who has the appropriate level of training and takes classes and/or directs leisure activities such as sporting areas, health clubs and swimming pools.</p>	
	<p>3.6.3 Leisure attendant grade 3 means a person who has the appropriate level of training, and who plans and co-ordinates leisure activities for guests and may supervise other leisure attendants.</p>	
	<p>3.7 Stores and other activities</p>	Item 49(8)(c)
<p>3.4.5 Storeperson grade 1 shall mean an employee who receives and stores general and perishable goods and cleans the store area.</p>	<p>3.7.1 Storeperson grade 1 means an employee who receives and stores general and perishable goods and cleans the store area.</p>	
<p>3.4.6 Storeperson grade 2 shall mean an employee who, in addition to the duties for a storeperson grade 1, may also operate mechanical lifting equipment such as a fork-lift and/or who may perform duties of more complex nature.</p>	<p>3.7.2 Storeperson grade 2 means an employee who, in addition to the duties for a storeperson grade 1, may also operate mechanical lifting equipment such as a fork-lift and/or who may perform duties of more complex nature.</p>	
<p>3.4.7 Storeperson grade 3 shall mean an employee who has the appropriate level of training and who:</p> <ul style="list-style-type: none"> (a) implements quality control techniques and procedures; and (b) understands and is responsible for a stores/warehouse area or a large section of such an area; and (c) has a highly developed level of interpersonal and communications skills; and (d) is able to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction; and (e) exercises discretion within the scope of this grade; and (f) may exercise skills attained through the successful completion of an appropriate warehousing certificate; and 	<p>3.7.3 Storeperson grade 3 means an employee who has the appropriate level of training and who:</p> <ul style="list-style-type: none"> 3.7.3(a) implements quality control techniques and procedures; and 3.7.3(b) understands and is responsible for a stores/warehouse area or a large section of such an area; and 3.7.3(c) has a highly developed level of interpersonal and communications skills; and 3.7.3(d) is able to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction; and 3.7.3(e) exercises discretion within the scope of this grade; and 3.7.3(f) may exercise skills attained through the successful completion of an appropriate warehousing certificate; and 	

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<p>(g) may perform indicative tasks at this level such as:</p> <p style="padding-left: 40px;">(i) liaising with management, suppliers and customers with respect to stores operations;</p> <p style="padding-left: 40px;">(ii) detailing and co-ordinating activities of other storepersons and acting in a leading hand capacity for in excess of ten storepersons;</p> <p>(h) maintaining control registers including inventory control and being responsible for preparation and reconciliation of regular reports or stock movements, despatches, etc;</p> <p>(i) supervises the receipt and delivery of goods, records, outgoing goods, responsible for the contents of a store.</p>	<p>3.7.3(g) may perform indicative tasks at this level such as:</p> <p style="padding-left: 40px;">3.7.3(g)(i) liaising with management, suppliers and customers with respect to stores operations;</p> <p style="padding-left: 40px;">3.7.3(g)(ii) detailing and co-ordinating activities of other storepersons and acting in a leading hand capacity for in excess of ten storepersons;</p> <p>3.7.3(h) maintaining control registers including inventory control and being responsible for preparation and reconciliation of regular reports or stock movements, despatches, etc;</p> <p>3.7.3(i) supervises the receipt and delivery of goods, records, outgoing goods, responsible for the contents of a store.</p>	
<p>3.4.7 Doorperson/security officer grade 1 shall mean a person who assists in maintenance of dress standards and good order at an establishment.</p>	<p>[relocated as 3.5.1]</p>	

<p>3.4.8 Timekeeper/security officer grade 2 shall mean a person who is responsible for timekeeping of staff, for the security of keys, for the checking in and out of delivery vehicles and/or for the supervision of doorman/security officer grade 1 personnel.</p>	<p>[relocated as 3.5.2]</p>	
<p>3.4.9 Handyperson shall mean a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises.</p>	<p>3.7.4 Handyperson means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises.</p>	
<p>3.4.10 Fork-lift driver shall mean an employee who has a recognised fork-lift licence and who is engaged solely on the basis of driving a fork-lift vehicle. For those employees who operate a fork-lift as only part of their duties, either food and beverage grade 3 or storeperson grade 2 are applicable.</p>	<p>3.7.5 Fork-lift driver means an employee who has a recognised fork-lift licence and who is engaged solely on the basis of driving a fork-lift vehicle. For those employees who operate a fork-lift as only part of their duties, either food and beverage grade 3 or storeperson grade 2 are applicable.</p>	
<p>3.4.11 Persons not otherwise provided for shall mean any employee for which no specific classification exists in this award.</p>	<p>3.7.6 Persons not otherwise provided for means any employee for which no specific classification exists in this award.</p>	

Current Award	Proposed Order	Comments
<p>3.5 Leisure activities</p>	<p>[relocated as 3.6]</p>	
<p>3.5.1 Leisure attendant grade 1 shall mean a person who acts as an assistant instructor, pool attendant and/or can be responsible for the setting up, distribution and care of equipment, and the taking of bookings.</p>	<p>[relocated as 3.6.1]</p>	
<p>3.5.2 Leisure attendant grade 2 shall mean a person who has the appropriate level of training and takes classes and/or directs leisure activities such as sporting areas, health clubs and swimming pools.</p>	<p>[relocated as 3.6.2]</p>	
<p>3.5.3 Leisure attendant grade 3 shall mean a person who has the appropriate level of training, and who plans and co-ordinates leisure activities for guests and may supervise other leisure attendants.</p>	<p>[relocated as 3.6.3]</p>	
	<p>3.8 General</p>	<p>Item 49(8)(c)</p>
	<p>3.8.1 Act means the <i>Workplace Relations Act 1996</i>.</p>	

3.8.2 Appropriate level of training means:

3.8.2(a) completion of a training course accredited by the Australian Hospitality Review Panel and deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification;

3.8.2(b) that the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in clause 3.8.2(a) assessment to be undertaken by a qualified skills assessor.

3.8.3 Continuous service

3.8.3(a) In calculating the twelve months' continuous service, the only absences counted as time worked are the following:

- up to 152 ordinary working hours in a twelve month period because of sickness or accident;

- long service leave that an employee takes under the relevant State long service leave legislation; and

Current Award	Proposed Order	Comments
	<p style="text-align: center;">· annual leave.</p> <p>3.8.3(b) Where a period of work is less than twelve months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.</p> <p>3.8.3(c) The following events do not break an employee's continuous service:</p> <ul style="list-style-type: none"> · sick leave; · leave as the result of an accident; · leave lawfully granted by the employer; or · absence for a reasonable cause. (The employee must prove that the leave was reasonable) <p>3.8.3(d) Where employees are temporarily stood down through no fault of their own, service is not to be considered to be broken.</p> <p style="text-align: center;">3.8.3(e) Any other absence from work does not break continuity of service unless the employer notifies the employee within fourteen days of the employee returning to work after the absence. The employer must tell the employee in writing.</p> <p style="text-align: center;">3.8.3(f) If an individual employee is absent, the employer must tell that employee by:</p> <ul style="list-style-type: none"> · giving the notice to him or her personally; or · posting the notice to his or her last known address. <p style="text-align: center;">3.8.3(g) If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the</p>	

same day.

3.8.3(h) It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.

Current Award	Proposed Order	Comments
	3.8.4 Double time shall mean double the ordinary hourly rate.	
3.6 Introductory level shall mean the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to 3 months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of 3 months from entry, an employee shall move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to 3 months is required for the employee to achieve competence for movement to level 1.	3.8.5 Introductory level means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to 3 months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of 3 months from entry, an employee will move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to 3 months is required for the employee to achieve competence for movement to level 1.	
	3.8.6 Resort means an establishment providing hotel services, accommodation, food and beverage with access to recreation facilities for guests.	
3.7 Appropriate level of training shall mean: (a) completion of a training course accredited by the Australian Hospitality Review Panel and deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification; (b) that the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in paragraph 3.5.5(a) assessment to be undertaken by a qualified skills assessor.	[see 3.8.2]	

	3.8.7 Rostered day off (RDO) means any continuous 24 hour period between the completion of the last ordinary shift and the commencement of the next ordinary shift on which an employee is rostered for duty.	
3.8 Spread of hours means the period of time elapsing from the time an employee commences duty to the time the employee ceases duty within any period of 24 hours.	3.8.8 Spread of hours means the period of time elapsing from the time an employee commences duty to the time the employee ceases duty within any period of 24 hours.	

Current Award	Proposed Order	Comments
3.9 Double time shall mean double the ordinary hourly rate prescribed for a permanent employee.	[see 3.8.4]	
3.10 Union for the purpose of this award shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union and branches thereof.	3.8.9 Union means the Australian Liquor, Hospitality and Miscellaneous Workers Union.	
3.11 Liquor service employees for the purpose of this award, refers to those persons employed in the capacity of the selling or dispensing of liquor in bars and/or bottle departments or shops and cellar employees.	[see 3.1.6]	
3.12 Rostered day off (RDO), for the purposes of this award, shall be considered to be any continuous 24 hour period between the completion of the last ordinary shift and the commencement of the next ordinary shift on which an employee is rostered on for duty.	[see 3.8.7]	
3.13 Resorts, for the purposes of this award are establishments providing hotel services, accommodation, food and beverage with access to recreation facilities for guests.	[see 3.8.6]	
4. DATE THE AWARD STARTS The Award starts on 23 May 1995. It continues until a new award is made on the same matters.	4. DATE THE AWARD STARTS This award comes into force on	Item 49(8)(c) s.146(1)
5. WHERE AND WHO THE AWARD COVERS	5. WHERE AND WHO THE AWARD COVERS	Item 49(8)(c)

<p>5.1 Where does the Award apply?</p> <p>The Award applies in:</p> <ul style="list-style-type: none"> · Victoria · Tasmania · New South Wales · the South East Division of Queensland 	<p>5.1 Where does the award apply?</p> <p>The award applies in:</p> <ul style="list-style-type: none"> · Victoria; · Tasmania; · New South Wales; and · the South East Division of Queensland. 	
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Current Award	Proposed Order	Comments
<p>5.2 Who does the Award apply to?</p> <p>This award relates to the industry of persons employed in any capacity whether permanent or casual in hotels, resorts, casinos, taverns, wine saloons, wine and spirit merchants retailing to the general public and other retail licensed establishments in or in connection with accommodation, with the selling of drinks, preparing and serving food and drinks, cleaning and attending to the premises and all other services associated therewith.</p> <p>[Note: this award does not apply to front office and clerical employees in the South Eastern Division of Queensland.]</p>	<p>5.2 Who does the award apply to?</p> <p>This award relates to the industry of persons employed in any capacity whether full-time, regular part-time or casual in hotels, resorts, casinos, taverns, wine saloons, wine and spirit merchants retailing to the general public and other retail licensed establishments in or in connection with accommodation, with the selling of drinks, preparing and serving food and drinks, cleaning and attending to the premises and all other services associated therewith.</p> <p>[Note: this award does not apply to front office and clerical employees in the South Eastern Division of Queensland.]</p>	
<p>5.3 Definition of South East Queensland</p> <p>The South-Eastern Division of Queensland shall comprise commencing at Point Danger, and bounded thence by the southern boundary of the State westerly to 151 degrees of east longitude; thence by that degree of longitude bearing true north to 24 degrees 30 minutes of south latitude; thence by that parallel of latitude bearing true east to the sea coast; and thence by the sea coast southerly to the point of commencement and all islands comprised in any State or Federal electorate in the South-Eastern Division of Queensland.</p>	<p>5.3 Definition of South East Queensland</p> <p>The South-Eastern Division of Queensland commences at Point Danger, and is bound by the southern boundary of the State westerly to 151 degrees of east longitude; by that degree of longitude bearing true north to 24 degrees 30 minutes of south latitude; by that parallel of latitude bearing true east to the sea coast; and thence by the sea coast southerly to the point of commencement and all islands comprised in any State or Federal electorate in the South-Eastern Division of Queensland.</p>	

6. WHO IS BOUND BY THIS AWARD?	6. WHO IS BOUND BY THIS AWARD?	Item 49(8)(c)
<p>This Award binds:</p> <p>(i) the Australian Liquor, Hospitality and Miscellaneous Workers Union, its Federal and State officers, and its members; and</p> <p>(ii) the Australian Hotels Association, its Federal and State officers, and its members, and:</p> <ul style="list-style-type: none"> · the employers specified in schedule A; · establishments of the type listed in clause 5 owned by the companies specified in schedule A; 	[parties required to confer]	

Current Award	Proposed Order	Comments
<ul style="list-style-type: none"> · employers that employ employees who: <ul style="list-style-type: none"> - work in any establishment specified in schedule A; and - work at the tasks of the type listed in clause 5; and - do the work of any classification set out in clauses 3 and 19. <p>The award applies to the employees of the employers identified above, whether members of the Australian Liquor, Hospitality and Miscellaneous Workers Union or not.</p>		
7. APPLICATION OF APPENDIX A	7. APPLICATION OF APPENDIX A	Item 49(8)(c)

<p>7.1 In relation to employment under this award by the respondent employer in respect of business at the establishment listed in part 1 of appendix A, the provisions of this award shall be read as though:</p> <p>7.1.1 Where there are equivalently numbered provisions in the award to those contained in part 2 of appendix A, the provisions set out in part 2 of appendix A are substituted for the corresponding provisions of the award; and</p> <p>7.1.2 Where there are no equivalently numbered provisions in the award to those contained in part 2 of appendix A, the provisions set out in part 2 of appendix A are additional to the provisions contained elsewhere in the award.</p>	<p>In relation to employment under this award by the respondent employer in respect of business at the establishment listed in Part 1 of Appendix A, the provisions of this award shall be read as though:</p> <p>7.1 Where there are equivalently numbered provisions in the award to those contained in Part 2 of Appendix A, the provisions set out in Part 2 of Appendix A are substituted for the corresponding provisions of the award; and</p> <p>7.2 Where there are no equivalently numbered provisions in the award to those contained in Part 2 of Appendix A, the provisions set out in Part 2 of Appendix A are additional to the provisions contained elsewhere in the award.</p>	
<p>8. RELATIONSHIP WITH OTHER AWARDS</p> <p>This award supersedes the <i>Hotels, Resorts and Hospitality Industry Award 1992</i> relating to employment in the industry covered by this award as specified in 5.2, but no right, obligation or liability accrued or incurred under such previous award shall be affected.</p>	<p>8. RELATIONSHIP WITH OTHER AWARDS</p> <p>This award supersedes the <i>Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995</i> relating to employment in the industry covered by this award as specified in 5.2, but no right, obligation or liability accrued or incurred under such previous award will be affected.</p>	Item 49(8)(c)

Current Award	Proposed Order	Comments
8A. HISTORY OF AWARD CHANGES	[deleted]	Not allowable
<p>8A.1 To assist employers and employees understand how the Award has changed over time the following table shall be maintained as a summary record of award changes by the employers, union or Commission (whichever the party varying the Award) on each occasion that an order varying the award is made.</p>		
<p>8A.2</p> <p>Clause(s) varied Date of effect Effect of change in summary</p> <p>Clause 1 Award title 27/11/95 Title of award changed</p> <p>Various matters 18/12/95 Section 150A review</p>		

<p>PART 2 - AWARD FLEXIBILITY</p> <p>9. ENTERPRISE FLEXIBILITY PROVISION</p>	<p>9. ENTERPRISE FLEXIBILITY PROVISIONS</p>	<p>Item 49(7)(a) Item 49(8)(a), (c) and (d)</p>
<p>9.1 To ensure that the award provides for:</p> <ul style="list-style-type: none"> · flexible working arrangements; · enhanced skills, job satisfaction and training; · optimum workplace efficiency and productivity; <p style="padding-left: 40px;">the parties will, consistent with the structural efficiency principle, establish at each enterprise a consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise. Any issue raised, award or non-award, which has an effect consistent with the above objectives shall be processed through that consultative mechanism and procedures set out below.</p>	<p>(See ss.113A and 113B of the Act)</p> <p>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 shall apply:</p>	
<p>9.2 Enterprise arrangements may involve a variation in the application of award provisions in order to meet the requirements of individual enterprises and their employees. Arrangements may be negotiated and consequential award variations processed in accordance with the provisions set out herein provided that:</p>	<p>9.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.</p> <p>9.2 For the purpose of the consultative process the employees may nominate the Union or another to represent them.</p>	

Current Award	Proposed Order	Comments
<p>(a) a majority of employees effected genuinely agree; and</p> <p>(b) such arrangement is consistent with the current National Wage Case principles.</p>	<p>9.3 Where agreement is reached an application shall be made to the Commission.</p>	
<p>9.3 The procedures for processing enterprise arrangements where no award variation is necessary will be as determined by the consultative body jointly established. Should difficulties emerge in processing, finalising or applying an agreement the matter may be referred to the Commission.</p>		

9.4 The procedures for processing enterprise arrangements where a variation to the award is necessary will be as follows:

9.4.1 All employees will be provided a reasonable opportunity to peruse the current prescriptions (e.g. award, industrial agreement or enterprise arrangement) that apply at the place of work.

9.4.2 The authorised representative of employees at an enterprise may include an organiser or official of the union if requested to be involved by an employee/s at the establishment.

9.4.3 Where agreement is genuinely reached between the employer and the employees, or their authorised representatives, as to an arrangement to apply at an enterprise such arrangement may be committed to writing.

9.4.4 Before any arrangements as in paragraph 9.4.3 is signed and processed further in accordance with this clause, the proposed arrangement shall be forwarded in writing by the employer to the employer association, if any, of which the employer is a member and to the Federal Secretary of the union.

9.4.5 The employer association or union may, within fourteen days thereof, notify the employer in writing of any objection to the proposed arrangements including a full outline of the reasons for such objections. Should such an objection be raised the parties are to confer in an effort to resolve the issue.

Current Award	Proposed Order	Comments
<p>9.4.6 The union and/or employer association shall not unreasonably withhold consent to the arrangements agreed upon.</p> <p>9.4.7 Where an arrangement is objected to in accordance with paragraph 9.4.5 hereof and the objection is not resolved, an employer may make application to the Australian Industrial Relations Commission to vary the award to give effect to the arrangement at the enterprise.</p> <p>9.4.8 If no party objects to the arrangement, then a consent application shall be made to the Australian Industrial Relations Commission to have the arrangement approved and the award varied in the manner specified in paragraph 9.4.9 hereof. Such applications are to be processed in accordance with the appropriate National Wage Case principles.</p>		

9.4.9 Where an arrangement is approved by the Australian Industrial Relations Commission and the arrangement is contrary to any provisions of the award then the name of the enterprise to which the arrangement applies, the date of the operation of the arrangement, the award provision from which the said enterprise is exempt and the alternative provisions which are to apply in lieu of such award provisions shall be set out in a schedule to the award.

9.4.10 Such arrangement when approved shall be displayed on a notice board at each enterprise effected.

9.4.11 No existing employee shall suffer a reduction in entitlement to earnings, award or overaward, for working ordinary hours of work as the result of any award changes made as part of the implementation of the arrangement.

9.4.12 The disputes procedures will apply if agreement cannot be reached in the implementation process on a particular issue.

Current Award	Proposed Order	Comments
9A. INDEX OF FACILITATIVE PROVISIONS	[see clause 40]	
9A.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise concerned.		
<p>9A.2 Facilitative provisions in this award are contained in the following clauses:</p> <p><u>Clause title Clause number</u></p> <p>Alternative method of payment [clause numbers not reproduced]</p> <p>Part-time employees - hours of work reproduced]</p> <p>Public holidays - payment</p> <p>Payment of wages - time of payment</p> <p>Payment of wages - method of payment</p> <p>Hours of work - method of working prescribed hours</p> <p>Spread of hours</p> <p>Fortnightly pay</p> <p>Overtime - time off in lieu of payment for overtime</p>		

<p>Rosters - alteration Annual leave - time of taking Maternity leave - variation of period Public holidays - coinciding with RDO's Clothing</p>		
<p>10. ALTERNATIVE METHOD OF PAYMENT</p>	<p>[see clause 22]</p>	<p>Item 49(8)(c)</p>
<p>10.1 As an alternative to being paid by the week according to clause 19 by agreement between the employer and the employee an employee can be paid at a rate equivalent to an annual salary of at least 25% or more above the rate prescribed in clause 19 times 52 for the work being performed. In such cases, there is no requirement under clauses 28 and 20 to pay overtime and penalty rates in addition to the weekly award wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled if all award overtime and penalty rate payment obligations had been complied with.</p>		

Current Award	Proposed Order	Comments
<p>10.1.1 Provided further in the event of termination of employment prior to completion of a year the salary paid during such period of employment shall be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.</p>		
<p>10.2 An employee being paid according to this subclause shall be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee shall be entitled to a day off in lieu or a day added to his/her annual leave entitlement.</p>		
<p>10.3 Where payment in accordance with this subclause is adopted, the employer shall keep a daily record of the hours worked by an employee which shall show the date and start and finish times of the employee for the day. The record shall be countersigned weekly by the employee and shall be kept at the place of employment for a period of at least six years.</p>		

	<p>10. WORK ORGANISATION</p> <p>10.1 Employees must undertake duties as directed within the limits of their competence.</p> <p>10.2 Despite the recognition of five career path streams, such streams do not prevent employees undertaking duties across different streams.</p>	Item 49(7)(b)
<p>PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION</p> <p>11. INTRODUCTION OF MAJOR CHANGE IN THE WORKPLACE</p> <p>11.1 Employers duty to notify</p> <p>11.1.1 Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union.</p>	[deleted]	Not allowable

Current Award	Proposed Order	Comments
<p>11.1.2 "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provisions for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.</p>		

11.2 Employer's duty to discuss change

11.2.1 The employer shall discuss with the employees affected and their union, inter alia, the introduction of the changes referred to in subclause 11.1 of this award the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the change.

11.2.2 The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause 11.1 of this award.

11.2.3 For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

Current Award	Proposed Order	Comments
12. PROCEDURE TO AVOID INDUSTRIAL DISPUTATION	11. PROCEDURE TO AVOID INDUSTRIAL DISPUTATION	Item 49(7)(a) Item 49(8)(c) and (d)
12.1 With respect to each of the employers bound by this award, disputes or grievances between it and its employees or any of them shall be settled in accordance with the procedures set out below:	11.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:	
12.1.1 Any grievance, claim or dispute which arises shall, where possible, be settled by discussions on the job between the employee and the management.	11.1.1 The employee and their supervisor meeting and conferring on the matter; and	
12.1.2 If the matter is not resolved at this level the matter will be further discussed between the affected employee, the union delegate and the management.	11.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.	

<p>12.1.3 If no agreement is reached, the relevant union organiser and delegate will discuss the matter with representatives of the employer.</p>		
<p>12.2 Should the matter still not be resolved the following procedure will be followed:</p>		
<p>12.2.1 A joint discussion shall be held between representatives of the Australian Hotels Association or other representatives of the employer and Australian Liquor, Hospitality and Miscellaneous Workers Union; or</p>	<p>11.2 If the matter is still not resolved a discussion shall be held between representatives of the Australian Hotels Association or other representative of the employer and the Union or other employee representative.</p>	
<p>12.2.2 A joint discussion between representatives of the Federal Executive of the Australian Hotels Association and the Federal Executive of the Australian Liquor, Hospitality and Miscellaneous Workers Union;</p>		
<p>12.2.3 If the matters are not finalised they shall be referred to either a Board of Reference or the Australian Industrial Relations Commission (the Commission).</p>	<p>11.3 If the matter cannot be resolved it may be referred to the Commission.</p>	
<p>12.3 Whilst the foregoing procedure is being followed work shall continue normally without bans or limitations. Where it is agreed that there is an existing custom work shall continue in accordance with that custom, but in other cases, the work shall continue in accordance with the direction of the company. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.</p>	<p>11.4 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.</p>	

Current Award	Proposed Order	Comments
<p>13. BOARD OF REFERENCE</p> <p>13.1 For the purpose of this award Boards of Reference are hereby constituted. They shall consist of one representative to be nominated by the union and one to be nominated by the respondent and one representative to be nominated by the Commission who shall be the Chairperson.</p> <p>13.2 The functions of Board of Reference shall be to settle disputes arising from this award and other matters specifically referred to it under the award or by the Commission.</p> <p>13.3 The Board shall meet as and when required and shall sit at such times</p>	<p>[deleted]</p>	<p>Item 49(7)(a) Item 49(8)(d)</p>

and places as the Board may from time to time determine.

13.4 The Board shall make its own rules of procedure and shall keep records of all matters referred for settlement and of the decisions thereon.

13.5 Decisions of the Board may be reviewed and altered by the Commission on application of any party to this award. Provided that notice of application to review is given within seven days of the decision of the Board and an application is lodged with the Industrial Registrar for such review within 21 days. When an application is made to review a decision such decision shall not come into effect until the matter has been dealt with by the Commission.

13.6 In the event of members of the Board failing to reach a unanimous decision in respect of any matter, the decision of the Chairperson shall be the decision of the Board.

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

14. EMPLOYER DUTIES

14.1 Sexual Harassment

14.1.1 All employees are to be allowed to work in an environment free of sexual harassment.

	[deleted]	Not allowable

Current Award

Proposed Order

Comments

14.1.2 An employer shall not dismiss an employee on the grounds of refusal to dress in a manner which would cause that employee embarrassment.

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<p>14.2 Cleaning Work</p> <p>14.2.1 Any bar attendant or cellarman shall not be required to scrub or wash floors or tables; such work shall be performed by the useful.</p> <p>14.2.2 No employees shall be required to clean or attend sanitary conveniences provided for the opposite sex except where the cleaning or servicing is to be carried out during a period or periods that a building or establishment is occupied solely by members of the same sex as the employees or where a sign is displayed indicating that the sanitary convenience is closed for cleaning or servicing.</p>	<p>[deleted]</p> <p>[deleted]</p>	<p>Item 49(7)(b)</p> <p>Not allowable</p>
<p>14.3 No Deduction for Breakage</p> <p>14.3.1 An employer shall not charge a sum against, require payment for nor deduct any sum from the wages or income of an employee in respect of breakages of cashiering underings except in the case of wilful misconduct.</p>	<p>12. NO DEDUCTION FOR BREAKAGES OR CASHIERING UNDERINGS</p> <p>An employer must not deduct any sum from the wages or income of an employee in respect of breakages or cashiering underings except in the case of wilful misconduct.</p>	<p>Item 49(8)(c)</p>
	<p>13. ANTI-DISCRIMINATION</p>	<p>Item 49(8)(c)</p>
	<p>13.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the <i>Workplace Relations Act 1996</i> 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, natural extraction or social origin.</p>	<p>and (d) s.89A(8)</p>

Current Award	Proposed Order	Comments
	<p>13.2 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.</p> <p>13.3 Nothing in this clause is taken to affect:</p>	

	<p>13.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;</p> <p>13.3.2 junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143(1E) of the Act;</p> <p>13.3.3 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.</p> <p>13.3.4 the exemptions in s.170CK(3) and (4) of the Act.</p>	
<p>15. STAND DOWN OF EMPLOYEES</p>	<p>14. STAND DOWN OF EMPLOYEES</p>	
<p>15.1 An employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed for the following reasons:</p> <p>15.1.1 a strike or stop-work meeting;</p> <p>15.1.2 a breakdown of machinery;</p> <p>15.1.3 rationing of power or the lack of fuel or transport;</p> <p>15.1.4 the non-delivery of the raw material and finished products in the Liquor Trades Industry; or</p> <p>15.1.5 any cause for which the employer cannot reasonably be held responsible, but shall not apply to slackness of trade.</p>	<p>14.1 An employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed for the following reasons:</p> <p>14.1.1 a strike or stop-work meeting;</p> <p>14.1.2 a breakdown of machinery;</p> <p>14.1.3 rationing of power or the lack of fuel or transport;</p> <p>14.1.4 the non-delivery of the raw material and finished products in the Liquor Trades Industry; or</p> <p>14.1.5 any cause for which the employer cannot reasonably be held responsible, but excluding slackness of trade.</p>	<p>Item 49(8)(c)</p>

Current Award	Proposed Order	Comments

<p>15.2 In respect of each of the reasons specified in clause 15.1:</p> <p>15.2.1 No employee shall be deemed to be a casual employee only by reason of being given intermittent work in pursuance of this clause;</p> <p>15.2.2 At least four hours' notice of such deduction shall be exhibited where all employees concerned shall be able to see it;</p> <p>15.2.3 Service is not to be considered broken merely because employees have been temporarily stood down through no fault of their own;</p> <p>15.2.4 Continuity of service is to be protected for the purpose of annual leave, holidays and sick pay, as provided by this award; and</p> <p>15.2.5 Employees allowed or required to commence work at the usual starting time on any day shall be paid for at least four hours, and where they are called upon to attend for duty twice on any one day they shall be paid not less than a full day's pay.</p>	<p>14.2 In respect of each of the reasons specified in clause 14.1:</p> <p>14.2.1 No employee can be deemed to be a casual employee only by reason of being given intermittent work in pursuance of this clause;</p> <p>14.2.2 The employer must give at least four hours' written notice of intention to make such a deduction, and the notice must be exhibited where all employees concerned are able to see it;</p> <p>14.2.3 Service is not to be considered broken merely because employees have been temporarily stood down through no fault of their own;</p> <p>14.2.4 Continuity of service is to be protected for the purpose of annual leave, holidays and sick pay, as provided by this award; and</p> <p>14.2.5 Employees allowed or required to commence work at the usual starting time on any day shall be paid for at least four hours, and where they are called upon to attend for duty twice on any one day they shall be paid not less than a full day's pay.</p>	
<p>16. EMPLOYMENT CATEGORIES</p>	<p>15. TYPES OF EMPLOYMENT</p>	
<p>16.1 General</p> <p>16.1.1 All employees shall be employed as permanent (full-time or part-time) or casual employees.</p> <p>16.1.2 At the time of engagement an employer shall inform each employee as to the terms of his/her engagement and in particular whether he/she is to be a full-time, part-time or casual employee.</p> <p>16.1.3 Employees engaged by the week by an employer shall not be engaged for casual work in the hotel in which they are permanently employed.</p>	<p>15.1 General</p> <p>15.1.1 Employees under this award will be employed in one of the following categories:</p> <p style="padding-left: 40px;">15.1.1(a) full-time employees; or</p> <p style="padding-left: 40px;">15.1.1(b) regular part-time employees; or</p> <p style="padding-left: 40px;">15.1.1(c) casual employees.</p> <p>15.1.2 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, regular part-time or casual.</p> <p>[deleted]</p>	<p>Item 49(8)(b) and (d)</p> <p>Not allowable</p>

Current Award	Proposed Order	Comments
<p>16.2 Casual Employment</p> <p>16.2.1 A "Casual employee" in this industry shall mean and be deemed to be any employee engaged as such to work for a lesser period than a working week of 38 hours on the class of employment for which the casual is employed.</p> <p>16.2.2 A casual employee shall be paid per hour at the rate of 1/38 of the weekly rate prescribed for the class of work performed, plus the appropriate undermentioned addition to that rate:</p> <p style="padding-left: 40px;">(a) 25 per cent for work Monday to Friday inclusive provided that for work performed between the hours of 7.00 p.m. and midnight an additional \$1.14 per hour or any part of an hour shall be paid with a minimum daily payment of \$1.73 and a maximum daily payment of three hours. Provided further that for work performed between midnight and 7.00 a.m. an additional \$1.65 per hour or any part of an hour shall be paid with a minimum daily payment of \$1.73 and a maximum daily payment of three hours. For the purposes of this subparagraph midnight shall include midnight Sunday;</p> <p style="padding-left: 40px;">(b) 50 per cent for work on Saturday;</p> <p style="padding-left: 40px;">(c) 75 per cent for work on Sunday; and</p> <p style="padding-left: 40px;">(d) 175 per cent for work on holidays prescribed in the award.</p> <p>16.2.3 Casual work may, by mutual consent, be paid for weekly or fortnightly</p>	<p>15.2 Casual employment</p> <p>15.2.1 A casual employee is an employee engaged as such.</p> <p>15.2.2 A casual employee shall be paid per hour at the rate of 1/38 of the weekly rate prescribed for the class of work performed, plus the appropriate undermentioned addition to that rate:</p> <p style="padding-left: 40px;">15.2.2(a) 25 per cent for work Monday to Friday inclusive provided that for work performed between the hours of 7.00 p.m. and midnight an additional \$1.14 per hour or any part of an hour shall be paid with a minimum daily payment of \$1.73 and a maximum daily payment of three hours. Provided further that for work performed between midnight and 7.00 a.m. an additional \$1.65 per hour or any part of an hour shall be paid with a minimum daily payment of \$1.73 and a maximum daily payment of three hours. For the purposes of this clause midnight shall include midnight Sunday;</p> <p style="padding-left: 40px;">15.2.2(b) 50 per cent for work on Saturday;</p> <p style="padding-left: 40px;">15.2.2(c) 75 per cent for work on Sunday; and</p> <p style="padding-left: 40px;">15.2.2(d) 175 per cent for work on holidays prescribed in the award.</p> <p>15.2.3 Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.</p> <p>15.2.4 On each occasion a casual employee is required to attend work he or she is entitled to a minimum payment for two hours work.</p>	<p>Item 49(8)(c)</p> <p>Item 49(8)(d)</p>

by agreement between the employers and employees or at the termination of each engagement.

16.2.4 "Engagement" for the purposes of this clause shall be deemed to mean the period or periods for which the employer notifies the employee that he or she is so required to attend on any one day. Provided that each period of engagement shall stand alone and shall be treated as an engagement of not less than two hours and paid for as such.

Current Award	Proposed Order	Comments
<p>16.2.5 Casual employees who have been regularly employed as such in an establishment shall not be re-employed as permanent employees in that same establishment for a lesser period than one month</p>	<p>[deleted]</p>	<p>Item 49(8)(d)</p>
<p>16.3 Part Time Employees</p> <p>16.3.1 Adults may be employed as part-time employees in any classification in this award on the basis as follows:</p> <p style="padding-left: 40px;">(a) Not less than three hours and not longer than eight hours per day, not less than three nor more than five days each week, and not less than fifteen hours each week, nor in excess of 30 hours per week;</p> <p style="padding-left: 40px;">(b) All the time worked in excess of eight hours per day, five days per week and/or 30 hours per week shall be overtime and paid for at the rates prescribed for other permanent employees in clause 28 of this award;</p> <p style="padding-left: 40px;">(c) The hours of duty each day shall be worked continuously. Provided that an employee who is required to work longer than five hours shall be granted a meal break of not less and not more than 30 minutes. The meal break shall not be counted as time worked. Where such meal break is not granted in a period of not longer than five hours of duty the penalty prescribed in clause 27 of this award shall be paid.</p>	<p>15.3 Regular part-time employees</p> <p>15.3.1 An employer may employ regular part-time employees in any classification in this award.</p> <p>15.3.2 A regular part-time employee is an employee who:</p> <p style="padding-left: 80px;">15.3.2(a) works less than full-time hours of 38 per week; and</p> <p style="padding-left: 80px;">15.3.2(b) has reasonably predictable hours of work; and</p> <p style="padding-left: 80px;">15.3.2(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.</p> <p>15.3.3 At the time of engagement the employer and the regular part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.</p> <p>15.3.4 Any agreed variation to the regular pattern of work will be recorded in writing.</p> <p>15.3.5 An employer is required to roster a regular part-time employee for a minimum of three consecutive hours on any shift.</p>	<p>Item 49(8)(b) and (c), not allowable and s.89A(4)(b)</p>

16.3.2 A part-time employee shall be paid per hour at the rate of 1/38 of the weekly rate prescribed for the class of work performed plus 10 per cent. The additional 10 per cent shall be regarded also as ordinary wages for the payment of annual leave, sick leave, and when work is not performed on a holiday.

16.3.3 A part-time employee who is required to work any of his/her ordinary hours between the hours of 7.00 p.m. and midnight Monday to Friday inclusive shall be paid an additional \$1.14 per hour or part of an hour for such time worked within the said hours plus the 10 per cent herein prescribed with a minimum daily payment of \$1.73 for any one day

15.3.6 An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 15.2.

15.3.7 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 28 - Overtime, of this award.

15.3.8 A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

Current Award	Proposed Order	Comments
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16.3.4 A part-time employee who is required to work any of his/her ordinary hours between midnight and 7.00 a.m. Monday to Friday inclusive shall be paid an additional \$1.65 per hour or part of an hour for such time worked within the said hours plus the 10 per cent herein prescribed with a minimum daily payment of \$1.73 for any one day. For the purposes of this subparagraph midnight shall include midnight Sunday. The said additional 10 per cent shall not apply in addition to the rates prescribed for work on Saturday, Sunday, holidays, overtime, or where double time is prescribed in the award.

16.3.5 The provisions of this award in respect of annual leave, sick leave and holidays shall apply on a pro rata basis to part-time employees.

16.3.6 The provisions of clauses 20, 28 and 29 of this award shall apply to part-time employees.

16.3.7 Notwithstanding the foregoing provisions by agreement between an employer and employee/s part-time employees may be employed for a specific number of hours each week on the following basis:

(a) The specific number of hours for such part-time employees shall be not less than twelve hours and not more than 32 hours each week and not less than three hours and not longer than eight hours each day to be worked in not more than five days each week;

(b) All time worked in excess of the rostered hours each day

and the specific number of hours each week shall be overtime and paid for at the rates prescribed for other permanent employees in clause 28 of this award;

(c) Provided further by agreement between the employer and the employee and/or the State branch of the union the arrangement of hours of work can be implemented as follows:

(i) The specific number of hours shall be not less than 48 and not more than 128 per each four week period;

Current Award	Proposed Order	Comments
<p>(ii) Subject to the following conditions:</p> <p>(A) Not less than three hours and not longer than eight hours each day and not more than nineteen days in each four week period.</p> <p>(B) Employees shall be entitled to a minimum of nine full days off per each four week period.</p> <p>(C) No employee shall work more than ten days in succession without a rostered day off.</p> <p>(D) All time worked in</p>		

excess of
the rostered
hours each
day and the
specific
number of
hours each
four week
period shall
be overtime
and paid
for at the
rates
prescribed
for other
weekly
employees
in clause 28
of this
award;

(d) A part-
time
employee
employed
under the
provisions
of this
subclause
shall be
paid per
hour at the
rate of 1/38
of the
weekly rate
prescribed
for the
class of
work
performed;

(e) A part-
time
employee
employed

under the provisions of this subclause shall be entitled to all other conditions of this clause provided such conditions are not inconsistent with the provisions of this subclause.

16.4 Apprentices

15.4 Apprentices

Item 49(8)(c) and (d)

16.4.1 Notwithstanding anything elsewhere contained in this award (other than in Tasmania and Victoria) any awards and/or regulations made by any State apprenticeship commission shall apply to any section of the trade to which such awards and/or regulations are expressed to apply; provided that any apprentice employed pursuant thereto shall be deemed to be a junior for the purpose of computing the proportion of juniors who may be employed under this award.

15.4.1 Awards and/or regulations to apply

Except in Victoria and Tasmania, any awards and/or regulations made by any State apprenticeship board or industrial tribunal applies to any section of the trade to which such awards and/or regulations are expressed to apply, despite anything contained in this award.

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Proposed Order

Comments

16.4.2 Where a training school is established by any hotel, company or a group of hotels, and training is given to young men and women in all phases of hotel operation and management, and such school is approved by the State apprenticeship authority as being a proper school for training, the rates applicable under the awards and/or regulations made by any State apprenticeship commission or authority shall be applicable to such approved school.

16.4.3 Any person completing a full apprenticeship for cooking shall not be paid less than a cook (tradesperson) grade 3 rate contained in clause 19. The provisions of clause 16.4 of this award shall not apply to an employee provided for in these subclauses.

16.4.4 Tasmania

(a) In Tasmania where an employee is apprenticed in the cooking trade in accordance with the provision of any State law and/or regulations made by the Apprenticeship Commission of Tasmania such employee shall be paid the percentage of the total wage prescribed for a cook (tradesperson) grade 3 in clause 19 of this award as follows:

Per
cent

First year 50
Second year 65
Third year 80
Fourth year 90

(b) In Tasmania where an employee is apprenticed in the waiting trade in accordance with the provisions of any State law and/or regulations made by the Apprenticeship Commission of Tasmania, such employee shall be paid the percentage of the total wage prescribed for a food and beverage attendant grade 5 in clause

15.4.2 Cooking apprenticeship

Any person completing a full apprenticeship for cooking must not be paid less than a cook (tradesperson) grade 3 rate contained in clause 18 - Classifications and wage rates.

15.4.3 Tasmania

15.4.3(a) In Tasmania where an employee is apprenticed in the cooking trade in accordance with the provision of any State law and/or regulations made by the Apprenticeship Commission of Tasmania such employee will be paid the percentage of the total wage prescribed for a cook (tradesperson) grade 3 in clause 18 of this award as follows:

First year 50%
Second year 65%
Third year 80%
Fourth year 90%

15.4.3(b) In Tasmania where an employee is apprenticed in the waiting trade in accordance with the provisions of any State law and/or regulations made by the Apprenticeship Commission of Tasmania, such employee will be paid the percentage of the total wage prescribed for a food and beverage attendant grade 5 in clause 18 of this award as follows:

Current Award	Proposed Order	Comments
<p style="text-align: center;"><u>Per cent</u></p> <p>First six months 62 Second six months 76 Third six months 76 Fourth six months 90 Fifth six months 90</p> <p>(c) Any person completing a full apprenticeship as a qualified tradesperson shall be paid not less than the total rate prescribed for a cook (tradesperson) grade 3 or food and beverage attendant grade 5 in clause 19 of this award.</p> <p>(d) The provisions of clause 16.4 of this award shall not apply to an employee provided for in this subclause.</p> <p>(e) All percentages prescribed in this subclause shall be calculated to the nearest ten cents. Any broken part of ten cents in the result being less than five cents shall be disregarded - five cents and over shall go to the higher ten cents.</p>	<p>First six months 62% Second six months 76% Third six months 76% Fourth six months 90% Fifth six months 90%</p> <p>15.4.3(c) Any person completing a full apprenticeship as a qualified trades person will be paid not less than the total rate prescribed for a cook (tradesperson) grade 3 or food and beverage attendant grade 5 in clause 18 - Classifications and wage rates of this award.</p> <p>15.4.3(d) The provisions of clause 15.4 of this award will not apply to an employee provided for in this clause.</p> <p>15.4.3(e) All percentages prescribed in this clause will be calculated to the nearest ten cents. Any broken part of ten cents in the result being less than five cents will be disregarded - five cents and over will go to the higher ten cents.</p>	
<p>16.4.5 Victoria</p> <p>(a) In Victoria where an employee is apprenticed in the cooking trade in accordance with the provision of any State law and/or regulations made by the Apprenticeship Commission of Victoria such employee shall be paid the percentage of the total wage prescribed for a cook (tradesperson) grade 3</p>	<p>15.4.4 Victoria</p> <p>15.4.4(a) In Victoria where an employee is apprenticed in the cooking trade in accordance with the provision of any State law and/or regulations made by the Apprentice Commission of Victoria such employee will be paid the percentage of the total wage prescribed for a cook (tradesperson) grade 3 in clause 18 of this award as follows:</p> <p style="text-align: right;">First year 55%</p>	

<p>in clause 19 of this award as follows:</p> <p>Per cent</p> <p>First year 55 Second year 65 Third year 80 Fourth year 95</p>	<p>Second year 65% Third year 80% Fourth year 95%</p>
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Current Award	Proposed Order	Comments
<p>(b) In Victoria where an employee is apprenticed in the waiting trade in accordance with the provisions of any State law and/or regulations made by the Apprenticeship Commission of Victoria, such employee shall be paid as follows:</p> <p style="padding-left: 40px;">(i) First six months - 70% of the total rate prescribed for food and beverage attendant grade 5 in clause 19;</p> <p style="padding-left: 40px;">(ii) Second six months - 85% of the total rate prescribed for food and beverage attendant grade 5 in clause 19;</p> <p style="padding-left: 40px;">(iii) Third six months - Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) and food and beverage attendant grade 5 in clause 19;</p> <p style="padding-left: 40px;">(iv) Fourth six months - Midway between the total rate prescribed for third 6 months and food and beverage attendant grade 5 in clause 19.</p> <p>(c) Any person completing a full apprenticeship as a qualified tradesperson shall be paid not less than the total rate prescribed for a cook (tradesperson) grade 3 or food and beverage attendant grade 5 in clause 19 of the award.</p> <p>(d) All percentages prescribed in this subclause shall be calculated to the nearest ten cents. Any broken part of ten cents in the result being less than five cents shall be disregarded - five cents and over shall go to the higher ten cents.</p>	<p>15.4.4(b) In Victoria where an employee is apprenticed in the waiting trade in accordance with the provisions of any State law and/or regulations made by the Apprenticeship Commission of Victoria, such employee will be paid as follows:</p> <p style="padding-left: 40px;">15.4.4(b)(i) First six months - 70% of the total rate prescribed for food and beverage attendant grade 5 in clause 18;</p> <p style="padding-left: 40px;">15.4.4(b)(ii) Second six months - 85% of the total rate prescribed for food and beverage attendant grade 5 in clause 18;</p> <p style="padding-left: 40px;">15.4.4(b)(iii) Third six months - Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) and food and beverage attendant grade 5 in clause 18;</p> <p style="padding-left: 40px;">15.4.4(b)(iv) Fourth six months - Midway between the total rate prescribed for</p>	

16.4.6 Proficiency - cooking trade - Victoria

(a) Application

- (i) Proficiency pay as set out in paragraph 16.4.6
- (b) hereof shall apply to apprentices who have successfully completed their schooling in a given year.

third 6 months and food and beverage attendant grade 5 in clause 18.

15.4.4(c) Any person completing a full apprenticeship as a qualified tradesperson will be paid not less than the total rate prescribed for a cook (tradesperson) grade 3 or food and beverage attendant grade 5 in clause 18 of the award.

15.4.4(d) All percentages prescribed in this clause will be calculated to the nearest ten cents. Any broken part of ten cents in the result being less than five cents will be disregarded - five cents and over will go to the higher ten cents.

Current Award	Proposed Order	Comments
<p>(b) Payments</p> <p>(i) Apprentices shall receive the rate of pay of a cook (tradesperson) grade 3 during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:</p> <p style="margin-left: 40px;">(A) On one occasion only:</p> <ul style="list-style-type: none">- for the first nine months of the fourth year apprenticeship, the normal fourth year rate of pay;- thereafter, the cook (tradesperson) grade 3 award rate of pay.		

(B) On two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;

- thereafter, the cook (tradesperson) grade 3 award rate of pay.

(C) On all three occasions:

- for the entire fourth year, the cook (tradesperson) grade 3 award rate of pay.

16.4.7 Proficiency waiting trade - Victoria

(a) Application

(i) Proficiency pay as set out in paragraph 16.3.2 hereof shall apply to level 2 apprentices who have successfully completed their schooling

in the first year.

Current Award	Proposed Order	Comments
<p data-bbox="241 240 398 272">(b) Payments</p> <p data-bbox="891 316 1070 930">(i) Apprentices who have attained the standard of proficiency in their first year shall receive the rate of pay of a food and beverage attendant (tradesperson) grade 4 during the latter half of the second year of apprenticeship.</p> <p data-bbox="78 970 562 1002">16.4.8 Apprentice - Victoria - Overtime</p> <p data-bbox="645 1046 1057 1209">(a) An apprentice in Victoria under the age of eighteen years shall not, without his or her consent, be required to work overtime or shift work.</p> <p data-bbox="645 1257 1039 1457">(b) Any apprentice employed pursuant to this award shall be deemed to be a junior for the purpose of computing the proportion of juniors who may be employed under this award.</p>	<p data-bbox="1077 240 1552 272">15.4.8 Apprentice - Victoria - overtime</p> <p data-bbox="1077 491 1182 523">[deleted]</p> <p data-bbox="1402 316 1930 443">An apprentice in Victoria under the age of eighteen years shall not, without his or her consent, be required to work overtime or shift work.</p>	<p data-bbox="1984 240 2152 304">Not allowable s.89A(4)(a)</p>

16.5 Juniors	15.5 Juniors	
<p data-bbox="76 111 1072 151">16.5.1 Junior employees (other than office juniors)</p> <p data-bbox="324 183 1041 327">(a) The minimum rate of wages for junior employees shall be the undermentioned percentages of the rates prescribed for the appropriate adult classification for the work performed for the area in which such junior is working.</p> <p data-bbox="403 359 560 399"><u>Age Per cent</u></p> <p data-bbox="403 430 739 574">17 years of age and under 70 18 years of age 80 19 years of age 90 20 years of age Full adult rate</p>	<p data-bbox="1077 111 1980 151">15.5.1 Junior employees (other than office juniors)</p> <p data-bbox="1400 183 1971 359">The minimum rate of wages for junior employees are the undermentioned percentages of the rates prescribed for the appropriate adult classification for the work performed for the area in which such junior is working.</p> <p data-bbox="1400 391 1556 430"><u>Age Per cent</u></p> <p data-bbox="1400 462 1747 606">17 years of age and under 70 18 years of age 80 19 years of age 90 20 years of age Full adult rate</p>	Item 49(8)(c)
<p data-bbox="76 659 1072 699">16.5.2 Junior office employees</p> <p data-bbox="235 730 1064 874">(a) The minimum rate of wages for junior office employees shall be the undermentioned percentages of rates prescribed for the office employee 1st year of adult service in the clerical industry at the grade in which such junior is working.</p>	<p data-bbox="1077 659 1980 699">15.5.2 Junior office employees</p> <p data-bbox="1243 730 1937 874">The minimum rates of wages for junior office employees are the undermentioned percentages of rates prescribed for the office employee 1st year of adult service in the clerical industry at the grade in which such junior is working.</p>	Item 49(8)(c)

Current Award	Proposed Order	Comments
<p data-bbox="403 1053 560 1093"><u>Age Per cent</u></p> <p data-bbox="403 1125 862 1332">At 15 years of age and under 50 At 16 years of age 60 At 17 years of age 70 At 18 years of age 80 At 19 years of age 90 At 20 years of age 1st year adult service</p>	<p data-bbox="1344 1053 1500 1093"><u>Age Per cent</u></p> <p data-bbox="1344 1125 1713 1300">At 15 years of age and under 50 At 16 years of age 60 At 17 years of age 70 At 18 years of age 80 At 19 years of age 90</p> <p data-bbox="1176 1332 1646 1372">At 20 years of age 1st year adult service</p>	

16.5.3 Percentage Pay Calculation

(a) The percentage prescribed in subclauses 16.5.1 and 16.5.2 hereof shall be calculated as follows:

(i) The total wage shall be calculated to the nearest ten cents any broken part of ten cents in the result being less than five cents shall be disregarded - five cents and over shall go to the higher ten cents;

(ii) Junior male or female employees, on reaching the age of eighteen years, may be employed in the bar or other places where liquor is sold. Provided that where such junior is employed the adult award rate for the work being performed shall be paid;

(iii) Junior employees being paid junior rates may be employed in

15.5.3 Other conditions

15.5.3(a) The percentage prescribed in clauses 15.5.1 and 15.5.2 hereof is calculated to the nearest ten cents. Any broken part of ten cents in the result being less than five cents is disregarded - five cents and over goes to the higher ten cents;

15.5.3(b) Junior employees, on reaching the age of eighteen years, may be employed in the bar or other places where liquor is sold. However, where a junior is employed the adult award rate for the work being performed must be paid;

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Item 49(8)(c)

Not allowable
s.89A(4)(a)

Not allowable
s.89A(4)(a)

the proportion not exceeding one junior to every three or fraction of three adults employed;

(iv) Notwithstanding anything elsewhere contained in this award where such junior employees are employed in excess of one to every three or fraction of three adults each such additional junior shall be paid the adult award rate for the work being performed. In deciding which junior or juniors shall be paid the adult rate, the length of service in the establishment shall apply;

Current Award

Proposed Order

Comments

(v) An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of a junior employee. If a birth certificate is required, the cost of it shall be borne by the employer; and

(vi) No employee under the age of 18 years shall be required to work more than ten hours in a shift.

15.5.3(c) An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of a junior employee. If a birth certificate is required, the cost of it must be borne by the employer; and

15.5.3(d) No employee under the age of eighteen years shall be required to work more than ten hours in a shift.

16.6 Supported wage employees

15.6 Supported wage system

Item 49(8)(c) and (e)

16.6.1 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:

(a) "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]";

(b) "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;

(c) "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;

15.6.1 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:

15.6.1(a) 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*.

15.6.1(b) Accredited assessor means a person accredited by the managing unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.

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

15.6.1(d) Assessment instrument means the form provided for under

(d) "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.

the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

Current Award	Proposed Order	Comments
<p>16.6.2 Eligibility criteria</p> <p>(a) 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.</p> <p>(b) The 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 current employment.</p> <p>(c) The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the <i>Disability Services Act 1986</i> 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</p>	<p>15.6.2 Eligibility criteria</p> <p>15.6.2(a) 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 test for a disability support pension.</p> <p>15.6.2(b) The 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.</p> <p>15.6.2(c) The clause also does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the <i>Disability Service Act 1986</i> 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 s.12A of that Act, or if a part only has received recognition, that part.</p>	

	support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.	
<p>16.6.3 Supported wage rates</p> <p>(a) Employees to whom this clause applies shall 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:</p>	<p>15.6.3 Supported wage rates</p> <p>15.6.3(a) 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 to the following schedule:</p>	

Current Award	Proposed Order	Comments
<p style="text-align: center;"><u>Assessed capacity % of prescribed award rate</u></p> <p>10% * 10%</p> <p>20% 20%</p> <p>30% 30%</p> <p>40% 40%</p> <p>50% 50%</p> <p>60% 60%</p> <p>70% 70%</p> <p>80% 80%</p> <p>90% 90%</p> <p>(Provided that the minimum amount payable shall be not less than \$45 per week).</p>	<p style="text-align: center;"><u>Assessed capacity % of prescribed award rate (clause 15.6.4)</u></p> <p>10% 10%</p> <p>20% 20%</p> <p>30% 30%</p> <p>40% 40%</p> <p>50% 50%</p> <p>60% 60%</p> <p>70% 70%</p> <p>80% 80%</p> <p>90% 90%</p> <p>15.6.3(b) Provided that the minimum amount payable will be not less</p>	

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

than \$45.00 per week.

15.6.3(c)
Where a person's assessed capacity is 10%, they will receive a high degree of assistance and support.

16.6.4 Assessment of capacity

(a) 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:

(i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these; or

(ii) the employer and an accredited

15.6.4 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:

15.6.4(a) the employer and a union party to the award, in consultation with the employee or, if desired by any of these; or

15.6.4(b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

	<p>Assessor from a panel agreed by the parties to the award and the employee.</p>	
<p>16.6.5 Lodgment of assessment instrument</p> <p>(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.</p>	<p>15.6.5 Lodgment of assessment instrument</p> <p>15.6.5(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Australian Industrial Relations Commission.</p>	

Current Award	Proposed Order	Comments
<p>(b) All assessment instruments shall 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 shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.</p>	<p>15.6.5(b) All assessment instruments shall 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 shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.</p>	
<p>16.6.6 Review of assessment</p> <p>(a) 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 shall be in accordance with the procedures for assessing capacity under the Supported Wage System.</p>	<p>15.6.6 Review of assessment</p> <p>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.</p>	

<p>16.6.7 Other terms and conditions of employment</p> <p>(a) Where an assessment has been made, the applicable percentage shall 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.</p>	<p>15.6.7 Other terms and conditions of employment</p> <p>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.</p>	
<p>16.6.8 Workplace adjustment</p> <p>(a) An employer wishing to employ a person under the provisions of this clause shall 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.</p>	<p>15.6.8 Workplace adjustment</p> <p>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.</p>	
<p>16.6.9 Trial period</p> <p>(a) 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 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.</p>	<p>15.6.9 Trial period</p> <p>15.6.9(a) 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.</p>	

Current Award	Proposed Order	Comments

(b) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.

(d) Work trials should include induction or training as appropriate to the job being trialled.

(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (d) hereof.

15.6.9(b) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

15.6.9(c) The minimum amount payable to the employee during the trial period shall be no less than \$45.00 per week.

15.6.9(d) Work trials should include induction or training as appropriate to the job being trialled.

15.6.9(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 15.6.4 hereof.

17. REDUNDANCY

<p>17.1 Discussions before termination</p> <p>17.1.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union.</p> <p>17.1.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph 17.1.1 hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.</p>	<p>[deleted]</p>	<p>Not allowable</p>
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<p>Current Award</p>	<p>Proposed Order</p>	<p>Comments</p>
<p>17.1.3 For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and their union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.</p>		
	<p>16. REDUNDANCY</p> <p>16.1 Definition</p> <p>Redundancy occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.</p>	<p>Item 49(8)(c)</p>

<p>17.2 Transfer to lower paid duties</p> <p>Where an employee is transferred to lower paid duties for reasons set out in paragraph 17.1.1 hereof the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or 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.</p>	<p>16.2 Transfer to lower paid duties</p> <p>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 the 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 rate of pay and the new ordinary time rate for the number of weeks of notice still owing.</p>	
<p>17.3 Severance pay</p> <p>In addition to the period of notice prescribed for ordinary termination in subclause 18.1 of this award and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph 17.1.1 hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service.</p>	<p>16.3 Severance pay</p> <p>16.3.1 In addition to the period of notice prescribed for ordinary termination in clause 17.1 an employee whose employment is terminated by reason of redundancy must be paid, subject to further order of the Commission, the following amount of severance pay in respect of a continuous period of service:</p>	

Current Award	Proposed Order	Comments
<p><u>Period of continuous service Severance pay</u></p> <p>1 year or less nil 1 year and up to the completion of 2 years 4 weeks' pay 2 years and up to the completion of 3 years 6 weeks' pay 3 years and up to the completion of 4 years 7 weeks' pay 4 years and over 8 weeks' pay</p> <p>(a) "Week's pay" means the ordinary time rate of pay for the employees concerned.</p> <p>(b) Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.</p>	<p><u>Period of continuous service Severance pay</u></p> <p>1 year or less nil 1 year and up to the completion of 2 years 4 weeks' pay 2 years and up to the completion of 3 years 6 weeks' pay 3 years and up to the completion of 4 years 7 weeks' pay 4 years and over 8 weeks' pay</p> <p>16.3.2 Week's pay means the ordinary time rate of pay for the employees concerned.</p> <p>16.3.3 Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.</p>	

<p>17.4 Employee leaving during notice</p> <p>An employee whose employment is terminated for reasons set out in paragraph 17.1.1 hereof may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.</p>	<p>16.4 Employee leaving during notice period</p> <p>An employee whose employment is terminated by reason of redundancy 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 they remained with the employer until the expiry of such notice. However, in this circumstance the employee will not be entitled to payment in lieu of notice.</p>	
<p>17.5 Alternative employment</p> <p>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.</p>	<p>16.5 Alternative employment</p> <p>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.</p>	
<p>17.6 Time off during notice period</p> <p>17.6.1 During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.</p>	<p>16.6 Time off during notice period</p> <p>16.6.1 During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.</p>	

Current Award	Proposed Order	Comments
<p>17.6.2 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 shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.</p>	<p>16.6.2 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 shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.</p>	
<p>17.7 Notice to Commonwealth Employment Service</p> <p>Where a decision has been made to terminate employees in the circumstances outlined in paragraph 17.1.1 hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.</p>		

17.8 Superannuation benefits	16.7 Superannuation benefits	
17.8.1 Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause 17.3 hereof 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.	16.7.1 Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under clause 16.3 hereof the difference between the severance pay specified in that clause and the amount of the superannuation benefit he or she receives which is attributable to employer contributions only.	
17.8.2 If this superannuation benefit is greater than the amount due under subclause 17.3 hereof then he or she shall receive no payment under that clause.	16.7.2 If this superannuation benefit is greater than the amount due under clause 16.3 hereof then he or she shall receive no payment under that clause.	
17.9 Transmission of business 17.9.1 Where a business is before or after the date of this award, transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee then:	[see clause 6]	

Current Award	Proposed Order	Comments
<p>(a) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and</p> <p>(b) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.</p> <p>17.9.2 In this subclause "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.</p>		

<p>17.10 Employees with less than one year's service</p> <p>17.10.1 This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.</p> <p>17.10.2 This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct, and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>17.10.3 Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time shall, once the traineeship is completed and provided that the trainee 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 shall be counted as service in determining any future redundancy entitlements.</p>	<p>16.8 Employees exempted</p> <p>[deleted]</p> <p>16.8.1 This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct, and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.</p> <p>16.8.2 Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time shall, once the traineeship is completed and provided that the trainee 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 shall be counted as service in determining any future redundancy entitlements.</p>	<p>Not allowable</p>
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Current Award	Proposed Order	Comments
<p>17.11 Employers exempted</p>	<p>16.9 Employers exempted</p>	
<p>Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than fifteen employees.</p>	<p>Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than fifteen employees.</p>	
<p>17.12 Incapacity to pay</p>	<p>16.10 Incapacity to pay</p>	
<p>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.</p>	<p>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.</p>	

<p>17.13 Clause 17, and in particular 17.3, does apply to Pancan Pty Ltd in relation to the termination of employment of six employees on or about 20 June 1995 notwithstanding that it employs less than fifteen employees.</p>	<p>[deleted]</p>	<p>Item 49(8)(d)</p>																				
<p>18. TERMINATION OF EMPLOYMENT</p>	<p>17. TERMINATION OF EMPLOYMENT</p>	<p>Item 49(8)(c) and (d)</p>																				
<p>18.1 Notice of termination by employer</p>	<p>17.1 Notice of termination by employer</p>																					
<p>18.1.1 In order to terminate the employment of a full-time or part-time employee the employer shall give to the employee the period of notice specified in the table below:</p> <table border="0" data-bbox="524 533 1010 879"> <tr> <td style="text-align: center;"><u>Period of continuous service</u></td> <td style="text-align: center;"><u>Period of notice</u></td> </tr> <tr> <td style="text-align: center;">1 year or less</td> <td style="text-align: center;">1 week</td> </tr> <tr> <td style="text-align: center;">Over 1 year and up to the completion of 3 years</td> <td style="text-align: center;">2 weeks</td> </tr> <tr> <td style="text-align: center;">Over 3 years and up to the completion of 5 years</td> <td style="text-align: center;">3 weeks</td> </tr> <tr> <td style="text-align: center;">Over 5 years of completed service</td> <td style="text-align: center;">4 weeks</td> </tr> </table>	<u>Period of continuous service</u>	<u>Period of notice</u>	1 year or less	1 week	Over 1 year and up to the completion of 3 years	2 weeks	Over 3 years and up to the completion of 5 years	3 weeks	Over 5 years of completed service	4 weeks	<p>17.1.1 In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:</p> <table border="0" data-bbox="1431 533 1928 847"> <tr> <td style="text-align: center;"><u>Period of continuous service</u></td> <td style="text-align: center;"><u>Period of notice</u></td> </tr> <tr> <td style="text-align: center;">1 year or less</td> <td style="text-align: center;">1 week</td> </tr> <tr> <td style="text-align: center;">Over 1 year and up to the completion of 3 years</td> <td style="text-align: center;">2 weeks</td> </tr> <tr> <td style="text-align: center;">Over 3 years and up to the completion of 5 years</td> <td style="text-align: center;">3 weeks</td> </tr> <tr> <td style="text-align: center;">Over 5 years of completed service</td> <td style="text-align: center;">4 weeks</td> </tr> </table>	<u>Period of continuous service</u>	<u>Period of notice</u>	1 year or less	1 week	Over 1 year and up to the completion of 3 years	2 weeks	Over 3 years and up to the completion of 5 years	3 weeks	Over 5 years of completed service	4 weeks	
<u>Period of continuous service</u>	<u>Period of notice</u>																					
1 year or less	1 week																					
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<u>Period of continuous service</u>	<u>Period of notice</u>																					
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Over 1 year and up to the completion of 3 years	2 weeks																					
Over 3 years and up to the completion of 5 years	3 weeks																					
Over 5 years of completed service	4 weeks																					
<p>18.1.2 In addition to the notice in paragraph 18.1.1 hereof, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.</p>	<p>17.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.</p>																					

<p>Current Award</p>	<p>Proposed Order</p>	<p>Comments</p>
<p>18.1.3 Payment in lieu of the notice prescribed in paragraphs 18.1.1 and/or 18.1.2 hereof shall 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 part payment in lieu thereof.</p>	<p>17.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.</p>	

<p>18.1.4 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.</p>	<p>17.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.</p>	
<p>18.1.5 The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.</p>	<p>17.1.5 The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.</p>	
<p>18.1.6 Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time shall 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 shall be counted as service in determining any future termination.</p>	<p>17.1.6 Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time shall 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 shall be counted as service in determining any future termination.</p>	
<p>18.1.7 For the purposes of this clause continuous service shall be as defined according to subclauses 30.10 to 30.13.</p>	<p>17.1.7 Continuous service is defined in clause 3.8.3.</p>	
<p>18.1.8 Notwithstanding anything hereinbefore contained an employee shall not be given notice or dismissed except for misconduct whilst legitimately absent from duty on accrued sick leave or annual leave.</p>	<p>[deleted]</p>	<p>Not allowable</p>

Current Award	Proposed Order	Comments
<p>18.2 Notice of termination by employee</p>	<p>17.2 Notice of termination by an employee</p>	
<p>18.2.1 The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.</p>	<p>17.2.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.</p>	

<p>18.2.2 If an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.</p>	<p>17.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.</p>	
<p>18.3 Time off during notice period</p> <p>Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.</p>	<p>17.3 Time off during notice period</p> <p>Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.</p>	
<p>18.4 Statement of employment</p> <p>The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of his or her employment and the classification of or the type of work performed by the employee.</p>	<p>[deleted]</p>	<p>Not allowable</p>
<p>18.5 Summary dismissal</p> <p>18.5.1 Notwithstanding the provision of paragraph 17.1.1 hereof the employer shall have the right to dismiss any employee without notice for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only.</p> <p>18.5.2 Subject to clause 31 of this award an employee who fails without sound reason to notify the employer within one hour of the rostered commencing time of his or her inability to attend for duty on any day may be dismissed without notice.</p>	<p>[see clause 17.1.5]</p> <p>[deleted]</p>	<p>Not allowable</p>

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<p>18.6 Unfair dismissals</p> <p>Termination of employment by an employer shall not be harsh, unjust or unreasonable.</p> <p>18.6.1 For the purpose of this clause, termination of employment shall include termination with or without notice.</p> <p>18.6.2 Without limiting the above, except where distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.</p>	<p>[deleted]</p>	<p>Not allowable</p>
<p>PART 5 - WAGES AND RELATED MATTERS</p>		
<p>19. CLASSIFICATION AND WAGE RATES</p> <p>19.1 An adult employee of a classification specified in the table hereunder (other than an apprentice or an employee in respect of whom a certificate under Section 123 of the Act is in force) shall be paid not less than the rate per week assigned to the classification for the area in which such employee is working. An employee's rate of pay is inclusive of the award rate set out in subclause 19.1 hereof and the additional allowance set out in subclause 19.2 hereof.</p> <p style="text-align: right;">Level & Classification Supp payment Arbitrated Award rate</p> <p style="text-align: right;">per week</p> <p style="text-align: right;">safety net per</p> <p style="text-align: right;">week</p> <p style="text-align: right;">\$ \$ \$</p> <p style="text-align: center;"><i>[table of wage rates not reproduced]</i></p> <p>19.2 In addition to the wage rates set out in subclause 19.1 hereof the following additional allowances shall be paid from the first pay period after the specified date for the following classifications for all purposes of this award. Where no allowance is identified the allowance shall be discontinued:</p> <p style="text-align: center;"><i>[table not reproduced]</i></p>	<p>18. CLASSIFICATIONS AND WAGE RATES</p> <p>18.1 Wage rates</p> <p>An adult employee of a classification specified in the table hereunder (other than an apprentice or an employee in respect of whom a certificate under s.123 of the Act is in force) shall be paid not less than the rate per week assigned to the classification for the area in which such employee is working. An employee's rate of pay is inclusive of the award rate set out in clause 18.1 hereof and the additional allowance set out in clause 23.5 hereof.</p> <p style="text-align: center;"><i>[no change to table of wage rates]</i></p> <p>[see clause 23.5]</p>	<p>Item 49(8)(c)</p>

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<p>19.3 Working across different streams</p> <p>Notwithstanding the recognition of five career path streams, such streaming does not prevent employees undertaking duties across different streams provided that where work is undertaken at a higher grade and/or at a higher rate then clause 21 applies.</p>	[see clause 10]	
<p>19.4 Supplementary Payments</p> <p>19.4.1 Supplementary payments prescribed in this clause are in substitution for any overaward payment as defined hereunder which would otherwise have been paid.</p> <p>19.4.2 "<u>Overaward Payment</u>" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment", or any term whatsoever) which an employee would receive in excess of the "award wage" which applied for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.</p>	[deleted]	Item 49(8)(d)
<p>19.5 Arbitrated safety net adjustment</p> <p>19.5.1 The rates of pay in this award include the first \$8 per week arbitrated safety net adjustment payment under the <u>September 1994 decision</u> [Print L5300]. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. 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.</p>	[deleted]	Item 49(8)(d)

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19.5.2 The rates of pay in this award include the second \$8 per week arbitrated safety net adjustment payable under the September 1994 decision [Print L5300]. This second \$8 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to certified agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. 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.

19.5.3 The rates of pay in this award include the third \$8 per week arbitrated safety net adjustment payable under the September 1994 Review decision [Print L5300]. This third \$8 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to certified agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. 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.

19.5.4(a) The rates of pay in this award include the \$10 per week arbitrated safety net adjustment payable under *the Safety Net Review - Wages April 1997* decision. 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 agree-

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[deleted]

18.2 Arbitrated safety net adjustment

18.2.1 The rates of pay in this award include the \$10 per week arbitrated safety net adjustment payable under the Safety Net Review - Wages April 1997 decision. 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

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<p>ments, 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.</p> <p>19.5.4(b) 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.</p>	<p>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.</p> <p>18.2.2 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.</p>	
<p>20. PENALTY RATES</p>	<p>19. PENALTY RATES</p>	<p>Item 49(8)(c) and (d)</p>
<p>20.1 Weekend penalty rates</p>	<p>19.1 Weekend penalty rates</p>	
<p>20.1.1 All permanent employees employed as at 6 May 1993 shall be entitled to the following weekend penalty rates:</p> <p>(a) For all ordinary time worked between midnight Friday and midnight Saturday time and a half of the wages for the respective classification as at 6 May 1993 and contained in Prints K3966 and K5233 shall be paid until such amount is exceeded by time and a quarter as provided for in subclause (b) of this clause when the provision of subclause (b) shall apply;</p> <p>(b) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid; and</p> <p>(c) For all ordinary time worked by liquor service employees on a Sunday double time of the wages for respective classifications as at 6 May 1993 and contained in Prints K3966 and K5233 shall be paid until such amounts are exceeded by time and three quarters as provided for in subclause (b) of this clause when the provisions of subclause (b) shall apply.</p>	<p>All employees other than casuals are entitled to the following weekend penalty rates:</p> <p>19.1.1 for all ordinary time worked between midnight Friday and midnight Saturday - time and a quarter; and</p> <p>19.1.2 for all ordinary time worked between midnight Saturday and midnight Sunday - time and three quarters.</p>	

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<p>20.1.2 All permanent employees who commence to be employed after the 6 May 1993 shall be entitled to the following weekend penalty rates:</p> <p>(a) For all ordinary time worked between midnight Friday and midnight Saturday time and a quarter rate shall be paid; and</p> <p>(b) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid.</p>		
<p>20.2 Public holidays</p>	<p>19.2 Public holidays</p>	
<p>20.2.1 Subject to subclause 34.1 of this award, all time worked by a permanent employee on a public holiday prescribed in subclause 34.1 shall be paid for at the rate of double time and one half for the hours worked, with a minimum of four hours additional pay. Alternatively, permanent employees who worked on a prescribed holiday may, by agreement, perform such work at ordinary rates plus half-time additional in that week provided that equivalent paid time is added to the employee's annual leave or one day in lieu of such public holiday shall be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to the employee within 28 days of such holiday falling due.</p>	<p>All time worked by an employee other than a casual on a public holiday prescribed in clause 34.1 shall be paid for at the rate of double time and one half for the hours worked, with a minimum of four hours additional pay. Alternatively, such employees who worked on a prescribed holiday may, by agreement, perform such work at ordinary rates plus half-time additional in that week provided that equivalent paid time is added to the employee's annual leave or one day in lieu of such public holiday shall be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to the employee within 28 days of such holiday falling due.</p>	
<p>20.3 Other penalty</p>	<p>19.3 Other penalty</p>	
<p>20.3.1 A permanent employee who is required to work any of his/her ordinary hours between the hours of 7.00 p.m. and midnight Monday to Friday inclusive shall be paid an additional \$1.14 per hour or any part of an hour for such time worked within the said hours with a minimum payment of \$1.73 for any one day.</p>	<p>19.3.1 An employee other than a casual employee who is required to work any of their ordinary hours between the hours of 7.00 p.m. and midnight Monday to Friday inclusive will be paid an additional [\$1.14] per hour or any part of an hour for such time worked within the said hours with a minimum payment of [\$1.73] for any one day.</p>	
<p>20.3.2 A permanent employee who is required to work any of his/her ordinary hours between midnight and 7.00 a.m. Monday to Friday inclusive shall be paid an additional \$1.65 per hour or part of an hour for such time worked within the said hours with a minimum payment of \$1.73 for any one day. For the purposes of this subparagraph midnight shall include midnight Sunday.</p>	<p>19.3.2 An employee other than a casual employee who is required to work any of his/her ordinary hours between midnight and 7.00 a.m. Monday to Friday inclusive will be paid an additional [\$1.65] per hour or part of an hour for such time worked within the said hours with a minimum payment of [\$1.73] for any one day. For the purposes of this provision midnight will include midnight Sunday.</p>	

Current Award	Proposed Order	Comments
<p>20.4 Penalty rates not cumulative</p> <p>Except as provided in clause 27, where time worked is required to be paid for at more than the ordinary rate such time shall not be subject to more than one penalty, but shall be subject to that penalty which is to the employee's greatest advantage.</p>	<p>19.4 Penalty rates not cumulative</p> <p>Except as provided in clause 27 - Breaks, where time worked is required to be paid for at more than the ordinary rate such time shall not be subject to more than one penalty, but shall be subject to that penalty which is to the employee's greatest advantage.</p>	
<p>21. MIXED FUNCTIONS</p> <p>21.1 Except for food and beverage attendant grade 2 and 3 as defined in clause 3, an employee engaged for two or more hours of one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If for less than two hours the employee shall be paid the higher rate for the time so worked.</p> <p>21.2 A higher paid employee shall, when necessary, temporarily relieve a lower paid employee without loss of pay.</p>	<p>20. MIXED FUNCTIONS</p> <p>20.1 Except for food and beverage attendant grade 2 and 3 as defined in clause 3 - Definitions, an employee engaged for two or more hours of one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If for less than two hours the employee shall be paid the higher rate for the time so worked.</p> <p>20.2 A higher paid employee shall, when necessary, temporarily relieve a lower paid employee without loss of pay.</p>	
<p>22. PAYMENT OF WAGES</p>	<p>21. PAYMENT OF WAGES</p>	Item 49(8)(c)
<p>22.1 Except upon the termination of employment all wages including overtime shall be paid on any day other than Friday, Saturday or Sunday in each week. Notwithstanding the foregoing, by agreement between the union, the employer and the employee, in a week where a holiday occurs payment of wages may be made on Friday.</p>	<p>21.1 Except upon the termination of employment all wages including overtime shall be paid on any day other than Friday, Saturday or Sunday in each week. However, by agreement between the employer and the majority of employees in the workplace, in a week where a holiday occurs payment of wages may be made on Friday.</p>	
<p>22.2 By agreement between the employer and the employee wages may be paid either weekly or fortnightly by one of the following means:</p> <p>22.2.1 cash;</p> <p>22.2.2 cheque; and</p> <p>22.2.3 payment into employee's bank account by electronic funds transfer, without cost to the employee.</p>	<p>21.2 By agreement between the employer and the employee wages may be paid either weekly or fortnightly by one of the following means:</p> <p>21.2.1 cash;</p> <p>21.2.2 cheque; and</p> <p>21.2.3 payment into employee's bank account by electronic funds transfer, without cost to the employee.</p>	

<p>22.3 In the event of a disagreement, the union and the relevant employer organisation or other representative of the employer may be informed.</p>	<p>[deleted]</p>	<p>Item 49(8)(d)</p>
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<p>Current Award</p>	<p>Proposed Order</p>	<p>Comments</p>
<p>22.4 Notwithstanding the provisions of this clause, an employer may pay an employee weekly by cash without consultation.</p>	<p>21.3 However, an employer may pay an employee weekly by cash without consultation.</p>	
<p>22.5 Employees who are paid their wages at any time other than during their working time, shall, if kept waiting more than 15 minutes, be paid overtime rates for all such waiting time.</p>	<p>21.4 Employees who are paid their wages at any time other than during their working time, shall, if kept waiting more than fifteen minutes, be paid overtime rates for all such waiting time.</p>	
<p>22.6 Employees whose rostered day off falls on pay day shall be paid their wages, if they so desire, before going off duty on the working day prior to their day off. Provided that this subclause shall not apply to employees paid by electronic funds transfer.</p>	<p>21.5 Employees whose rostered day off falls on pay day shall be paid their wages, if they so desire, before going off duty on the working day prior to their day off. Provided that this provision shall not apply to employees paid by electronic funds transfer.</p>	
<p>22.7 When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other moneys due shall be made at the employee's normal place of employment prior to the employee leaving such place of employment. If an employee is kept waiting for more than 15 minutes after termination of employment such employees shall be paid overtime rates for waiting time.</p> <p>22.7.1 Provided that where an employee is dismissed for misconduct such employee shall be paid within 24 hours from the time of dismissal.</p> <p>22.7.2 For the purpose of this subclause, waiting time shall mean all time an employee is kept waiting on the premises of the employer on the day of termination of employment in excess of the waiting time specified herein. In the event of an employee not being paid on the day of termination of employment, such employee shall be paid at the rate of time and a half until payment is effected, with a minimum payment of two hours and a maximum of seven hours 36 minutes per day. Notwithstanding the foregoing provisions if it is established by a Board of Reference as provided for in this award that the failure to pay an employee correctly at time of termination was due to a genuine error by the employer, payment of waiting time over and above the day of termination shall not apply.</p>		

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<p>22.7.3 Provided that in the case of an employee whose ordinary hours are arranged in accordance with paragraphs 26.1.1 to 26.1.3 of this award is paid average pay and who has not taken the day off or days off due to him during the working cycle in which his employment is terminated, the wages due to that employee shall include the total of credits accrued during the work cycle as mentioned in clause 26 of this award.</p> <p>22.7.4 Provided further that where the employee has taken a day off during the work cycle in which his or her employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.</p>		
<p>22.8 At the time of payment of wages each employee not in receipt of taxation deduction stamps shall be issued with a statement showing gross wage, taxation deduction, net wage, and date to which payment is made.</p>	[deleted]	Item 49(7)(a)
<p>22.9 For the purpose of this award including overtime, weekend and public holiday penalties the hourly rates of wages shall be calculated by dividing the appropriate weekly rates provided in clause 19 of this award by 38.</p>	[deleted]	Item 49(8)(c)
	<p>22. OPTION FOR ANNUALISED SALARY</p> <p>22.1 As an alternative to being paid by the week according to clause 18 - Classifications and wage rates, by agreement between the employer and the employee an employee can be paid at a rate equivalent to an annual salary of at least 25% or more above the rate prescribed in clause 18 times 52 for the work being performed.</p> <p>22.1.1 In such cases, there is no requirement under clauses 19 - Penalty rates and 28 - Overtime to pay penalty rates and overtime in addition to the weekly award wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.</p>	Item 49(8)(c)

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	<p>22.1.2 Provided further in the event of termination of employment prior to completion of a year the salary paid during such period of employment will be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.</p> <p>22.2 An employee being paid according to this clause will be entitled to a minimum of eight days off per four week cycle. If such an employee is required to work on a public holiday, they are entitled to a day off in lieu or a day added to their annual leave entitlement.</p> <p>22.3 Where payment in accordance with this clause is adopted, the employer shall keep a daily record of the hours worked by an employee which shall show the date and start and finish times of the employee for the day. The record shall be countersigned weekly by the employee and shall be kept at the place of employment for a period of at least six years.</p>	
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23. ALLOWANCES	23. ALLOWANCES	Item 49(8)(c)
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<p>23.1 An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he or she will be so required to work shall either be supplied with a meal by the employer or paid \$6.44 meal money.</p>	<p>23.1 Meal allowance</p> <p>23.1.1 An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he or she will be so required to work shall either be supplied with a meal by the employer or paid \$6.44 meal money.</p>	
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<p>23.2 If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, he or she shall be paid as above prescribed for the meal which he or she has provided but which is surplus.</p>	<p>23.1.2 If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, he or she shall be paid as above prescribed for the meal which he or she has provided but which is surplus.</p>	
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<p>23.3 An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St. John's Ambulance or similar body shall be paid a weekly allowance of \$5.40 per week if he/she is appointed by the employer to perform first aid duty.</p>	<p>23.2 First aid allowance</p> <p>An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from the St. John's Ambulance or similar body shall be paid an allowance of \$5.40 per week if he/she is appointed by the employer to perform first aid duty.</p>	
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Current Award	Proposed Order	Comments
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	23.3 Clothing, equipment and tools	
23.4 Where a Cook is required to use their own tools, an allowance of \$1.50 per day or part thereof up to a maximum of \$7.40 per week shall be paid.	23.3.1 Where a Cook is required to use his or her own tools, the employer must pay an allowance of \$1.50 per day or part thereof up to a maximum of \$7.40 per week.	
	23.3.2 Where the employer requires an employee to wear any special clothing such as coats, dresses, caps, aprons, cuffs and any other articles of clothing, the employer must reimburse the employee for the cost of purchasing such special clothing. The provisions of this clause do not apply where the special clothing is paid for by the employer.	
	23.3.3 Where the employee is responsible for laundering the special clothing the employer must reimburse the employee for the demonstrated costs of laundering it.	
	23.3.4 The employer and the employee may agree on an arrangement under which the employee will wash and iron the special clothing for an agreed sum of money to be paid by the employer to the employee each week. In the event of dispute as to an appropriate allowance under such an arrangement, the amount may be determined by a Board of Reference.	
	23.3.5 Black and white attire (not being dinner suit or evening dress), shoes, hose and/or socks is not special clothing.	
	23.3.6 Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons, or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the special clothing is supplied to the employee at the employer's expense. Where protective clothing is supplied without cost to the employee, it will remain the property of the employer. In the event of dispute, the necessity for the provision of protective clothing may be determined by a Board of Reference.	

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23.3.7 An employer may require an employee on commencing employment to sign a receipt for item/s of uniform and property. This receipt must list the item/s of uniform and property and the value of them. If, when an employee ceases employment, the employee does not return the item/s of uniform and property (or any of them) in accordance with the receipt, the employer will be entitled to deduct the value as stated on the receipt from the employee's wages.

23.3.8 In the case of genuine wear and tear, damage, loss or theft that is not the employee's fault the provisions of paragraph 23.3.7 will not apply.

23.3.9 Any disagreement concerning the value of item/s of uniform and property and any other aspect of this clause may be determined by a Board of Reference.

23.3.10 Where the employer requires an employee to provide and use any towels, tools, ropes, brushes, knives, choppers, implements, utensils and materials, the employer must reimburse the employee for the cost of purchasing such equipment. The provisions of this clause shall not apply where the employer supplies such items without cost to the employee.

23.4 Travelling allowance

23.4.1 Working late

When an employer requires an employee to work until it is too late to travel by his or her normal method of transport home the employer must pay the cost of transport for the employee to get home free of charge. This clause does not apply where the employer provides accommodation for the employee for the night free of charge.

23.4.2 Working early

When an employer requires an employee to start work before his or her normal starting time and before his or her normal method of transport to work is available the employer must pay the cost of transport for the employee to get to work. This clause does not apply where the employer provides transport for the employee to get to work.

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	<p>23.4.3 Working away from usual place of work</p> <p>This clause applies where an employer requires an employee other than a casual to work at a place more than 80 kilometres from the employees' usual place of work. In these circumstances the employer must pay the employee an amount equal to the cost of fares reasonably spent by the employee in travelling from the employees usual place of work to the new place of work. However the employer may recover any amount paid to an employee under this clause if the employee concerned leaves his or her employment or is dismissed for misconduct within three months of receiving such a payment.</p>	
	<p>23.5 In addition to the wage rates set out in clause 18.1 hereof the following additional allowances must be paid for the following classifications for all purposes of this award:</p> <p style="text-align: center;"><u>Classification</u></p> <p>Fork-lift driver \$6.70 Loading bay security officer Wrest Point Casino \$11.60</p>	Item 49(8)(c)
<p>24. BROKEN PERIODS OF WORK</p>	<p>24. BROKEN PERIODS OF WORK</p>	Item 49(8)(d)
<p>Permanent employees who have a broken work day shall receive an additional allowance for a spread of hours as prescribed in clause 26 of this award as follows:</p>	<p>Employees other than casuals who have a broken work day shall receive an additional allowance for a spread of hours as prescribed in clause 26 - Hours of work of this award as follows:</p>	
<p>24.1 Two hours over the hours worked in a day and up to three hours - \$1.46.</p>	<p>24.1 Two hours over the hours worked in a day and up to three hours - \$1.46.</p>	
<p>24.1 Three hours over the hours worked - \$2.29.</p>	<p>24.2 Three hours over the hours worked - \$2.29.</p>	

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<p>25. SUPERANNUATION</p>	<p>25. SUPERANNUATION</p>	
<p>25.1 Preamble</p> <p>25.1.1 Superannuation legislation</p> <p>25.1.1(a) The subject of superannuation contributions is dealt with extensively by legislation including <i>the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993</i>. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.</p> <p>25.1.1(b) Notwithstanding 25.1.1(a) above, the following provisions shall also apply.</p>	<p>25.1 Preamble</p> <p>25.1.1 Superannuation legislation</p> <p>25.1.1(a) The subject of superannuation contributions is dealt with extensively by legislation including <i>the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993</i>. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.</p> <p>25.1.1(b) Notwithstanding 25.1.1(a) above, the following provisions shall also apply.</p>	
<p>25.2 Definitions</p>	<p>25.2 Definitions</p>	
<p>25.2.1(a) Subject to 25.2.1(b), the Fund for the purposes of this clause shall mean the Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS) and/or HOST-PLUS Queensland Trust Deed which complies with the Superannuation Industry (Supervision) Act 1993 as amended from time to time, and any scheme which may be made in succession thereto.</p> <p>25.2.1(b) In relation to Twin Waters Resort Pty Limited, Fund will mean either HOST-PLUS Queensland Trust Deed or Sunsuper.</p> <p>25.2.1(c) In relation to the Royal Hotel in Wyong, Fund will mean either HOST-PLUS or Mercantile Mutual Life.</p>	<p>25.2.1(a) Subject to 25.2.1(b), the Fund for the purposes of this clause shall mean the Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS) and/or HOST-PLUS Queensland Trust Deed which complies with the <i>Superannuation Industry (Supervision) Act 1993</i> as amended from time to time, and any scheme which may be made in succession thereto.</p> <p>25.2.1(b) In relation to Twin Waters Resort Pty Limited, Fund will mean either HOST-PLUS Queensland Trust Deed or Sunsuper.</p> <p>25.2.1(c) In relation to the Royal Hotel in Wyong, Fund will mean either HOST-PLUS or Mercantile Mutual Life.</p>	

<p>25.2.2 Ordinary time earnings for the purposes of this clause, means:</p> <p>25.2.2(a) award classification rate;</p> <p>25.2.2(b) over-award payment;</p>	<p>25.2.2 Ordinary time earnings for the purposes of this clause, means:</p> <p>25.2.2(a) award classification rate;</p> <p>25.2.2(b) over-award payment;</p>	
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<p>25.2.2(c) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;</p> <p>25.2.2(d) casual loading in respect to casual employees.</p>	<p>25.2.2(c) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;</p> <p>25.2.2(d) casual loading in respect of casual employees.</p>	
<p>25.2.3 Ordinary time earnings does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance.</p>	<p>25.2.3 Ordinary time earnings does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance.</p>	
<p>25.3 Employers to become a party to the fund</p>	<p>25.3 Employers to become a party to the fund</p>	
<p>25.3.1 A respondent employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.</p>	<p>25.3.1 A respondent employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.</p>	
<p>25.3.2 A respondent employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.</p>	<p>25.3.2 A respondent employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.</p>	
<p>25.3.3 Each employee shall be required to complete the membership application and the employer shall forward the completed application to the fund by the end of the calendar month of commencement of this clause or commencement of employment.</p>	<p>25.3.3 Each employee shall be required to complete the membership application and the employer shall forward the completed application to the fund by the end of the calendar month of commencement of this clause or commencement of employment.</p>	
<p>25.4 Eligibility of employees</p>	<p>25.4 Eligibility of employees</p>	

<p>25.4.1 Each employee shall be eligible to join the fund upon commencement of employment, subject to 25.3.1.</p>	<p>25.4.1 Each employee shall be eligible to join the fund upon commencement of employment, subject to 25.3.1.</p>	
<p>25.4.2 Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in 25.3.3 was forwarded to the fund.</p>	<p>25.4.2 Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in 25.3.3 was forwarded to the fund.</p>	

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<p>25.5 Employer contributions</p>	<p>25.5 Employer contributions</p>	
<p>25.5.1 A respondent employer shall contribute to the fund in respect of each employee such contributions as required to comply with the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 as amended from time to time:</p>	<p>25.5.1 A respondent employer shall contribute to the fund in respect of each employee such contributions as required to comply with the <i>Superannuation Guarantee (Administration) Act 1992</i> and the <i>Superannuation Guarantee Charge Act 1992</i> as amended from time to time:</p>	
<p style="text-align: center;">25.5.1(a) six per cent of ordinary time earnings on behalf of each eligible employee:</p> <p style="text-align: right;">Ordinary time earnings</p> <p style="text-align: center;">1996/97 6% 1997/98 6%</p>	<p style="text-align: center;">25.5.1(a) Six per cent of ordinary time earnings on behalf of each eligible employee:</p> <p style="text-align: right;"><u>Ordinary</u> <u>time</u> <u>earnings</u></p> <p style="text-align: center;">1996/97 6% 1997/98 6%</p>	
<p>25.5.2 Provided that the employer shall make contributions for each employee for each month where the employee earns \$350.00 or more in a calendar month:</p> <p>25.5.2(a) the amount of contributions to the fund shall be calculated to the nearest ten cents, any fraction below five cents shall be disregarded.</p>	<p>25.5.2 Provided that the employer shall make contributions for each employee for each month where the employee earns \$350.00 or more in a calendar month the amount of contributions to the fund shall be calculated to the nearest ten cents, any fraction below five cents shall be disregarded.</p>	

<p>25.5.3 A respondent employer shall contribute to the fund:</p> <p>25.5.3(a) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or</p> <p>25.5.3(b) equivalent monthly contributions at such other times and in such manner as may be agreed in writing between the Trustees of a fund and the employer.</p> <p>25.5.3(c) Contributions shall continue to be paid in accordance with this clause during any period in respect of which an employee is entitled to receive Accident Pay in accordance with clause 39 of this award.</p>	<p>25.5.3 A respondent employer shall contribute to the fund:</p> <p>25.5.3(a) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or</p> <p>25.5.3(b) equivalent monthly contributions at such other time and in such manner as may be agreed in writing between the Trustees of a fund and the employer.</p> <p>25.5.3(c) Contributions shall continue to be paid in accordance with this clause during any period in respect of which an employee is entitled to receive accident pay in accordance with clause 37 of this award.</p>	
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25.6 Voluntary employees contributions	25.6 Voluntary employees contributions	
25.6.1 An employee may make contributions to the fund in addition to those made by the respondent employer under clause 25.5.	25.6.1 An employee may make contributions to the fund in addition to those made by the respondent employer under clause 25.5.	
25.6.2 An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.	25.6.2 An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.	
25.6.3 An employer who receives written authorisation from the employee, must commence making payments into the fund on behalf of the employee within fourteen days of receiving the authorisation.	25.6.3 An employer who received written authorisation from the employee, must commence making payments into the fund on behalf of the employee within fourteen days of receiving authorisation.	
25.6.4 An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.	25.6.4 An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.	
25.6.5 Additional employees contributions to the fund requested under this clause shall be expressed in whole dollars.	25.6.5 Additional employees contributions to the fund requested under this clause shall be expressed in whole dollars.	

<p>25.6.6 Employees shall have the right to adjust the level of contributions made on their own behalf on the first of July each year provided that by agreement with the respondent employer the employees may vary their additional contribution at other times.</p>	<p>25.6.6 Employees shall have the right to adjust the level of contributions made on their own behalf on the first of July each year provided that by agreement with the respondent employer the employees may vary their additional contribution at other times.</p>	
<p>25.7 Exemptions</p>	<p>25.7 Exemptions</p>	
<p>25.7.1(a) Where an agreement is reached at a particular enterprise or workplace, between the employer and the majority of employees, to provide for the payments of superannuation contributions into a fund other than Host Plus, an application shall be made to the Commission to vary the operation of the award in respect of the enterprise or workplace concerned.</p>	<p>25.7.1 Where an agreement is reached at a particular enterprise or workplace, between the employer and the majority of employees, to provide for the payments of superannuation contributions into a fund other than HOST PLUS, an application shall be made to the Commission to vary the operation of the award in respect of the enterprise or workplace concerned.</p>	

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<p>25.7.1(b) The agreement must meet the following requirements to enable the Commission to vary the award to give effect to it:</p> <p>25.7.1(b)(i) that the majority of employees covered by the agreement genuinely agree to it; and</p>	<p>25.7.2 The agreement must meet the following requirement to enable the Commission to vary the award to give effect to it:</p> <p>25.7.2(a) that the majority of employees covered by the agreement genuinely agree to it; and</p>	
<p>25.7.1(b)(ii) that the fund specified is a complying fund under the <i>Superannuation Industry (Supervision) Act 1993</i> (SIS).</p>	<p>25.7.2(b) that the fund specified is a complying fund under the <i>Superannuation Industry (Supervision) Act 1993</i> (SIS).</p>	
<p>25.7.1(c) The union must be notified of the terms of the agreement at the time it is lodged with the Commission for approval.</p>	<p>25.7.3 The Union must be notified of the terms of the agreement at the time it is lodged with the Commission for approval.</p>	

<p>25.7.1(d) In the event that the union does not notify the Commission of an objection to the agreement within fourteen days of the agreement being lodged, the Commission will vary the award if satisfied the agreement complies with the SIS Act.</p>	<p>25.7.4 In the event that the Union does not notify the Commission of an objection to the agreement within fourteen days of the agreement being lodged, the Commission will vary the award if satisfied the agreement complies with the SIS Act.</p>	
<p>25.7.1(e) In the event that the ALHMWU objects to the agreement within the specified time then the matter will be set down for hearing.</p>	<p>25.7.5 In the event that the ALHMWU objects to the agreement within the specified time then the matter will be set down for hearing.</p>	
<p>25.7.2 In respect of non union members in any contested matter, the union must bear the onus of establishing that "special circumstances" exist which warrant the continued specification of Host Plus as the prescribed fund. In respect of union members, the employer applicant must bear the onus of establishing its case on the usual grounds of "equity, good conscience and the substantial merits of the case".</p>	<p>25.7.6 In respect of non union members in any contested matter, the Union must bear the onus of establishing that "special circumstances" exist which warrant the continued specification of HOST PLUS as the prescribed fund. In respect of union members, the employer applicant must bear the onus of establishing its case on the usual grounds of "equity, good conscience and the substantial merits of the case".</p>	
<p>25.7.3(a) Failure by an employer to give each relevant union an opportunity to be involved in the process leading up to the making of an agreement may result in the Commission adjourning or refusing the application to vary the award.</p>	<p>25.7.7 Failure by an employer to give each relevant union an opportunity to be involved in the process leading up to the making of an agreement may result in the Commission adjourning or refusing the application to vary the award.</p>	
<p>25.7.3(b) A relevant union in this context means an organisation of employees that:</p> <p>25.7.3(b)(i) is party to this award; and</p>	<p>25.7.8 A relevant union in this context means an organisation of employees that:</p> <p>25.7.8(a) is party to this award; and</p>	

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25.7.3(b)
(ii) has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

25.7.8(b) has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFTWORK, WEEKEND WORK

26. HOURS OF WORK

26. HOURS OF WORK

Item 49(7)(a)
Item 49(8)(a)
and (c)

26.1 The hours of all permanent full-time employees shall be an average of 38 hours per week to be worked in one of the following two ways:

26.1.1 First, at any one establishment a combination of the following methods may be worked:

- (a) a nineteen day month, of eight hours each day;
- (b) the banking of a day each month, up to a maximum of five days to be taken at a time mutually acceptable to the employer and the employee;
- (c) four days at eight hours and one of six hours;
- (d) four days at nine and a half hours per day;
- (e) five days, to be worked at a total of seven hours and 36 minutes per day;

26.1 The hours of work of a full-time employee are an average of 38 per week.

26.1.1 The average of 38 hours per week is to be worked in one of the following ways:

- 26.1.1(a)** a nineteen day month, of eight hours per day;
- 26.1.1(b)** four days of eight hours and one of six hours;
- 26.1.1(c)** four days of nine and a half hours per day;
- 26.1.1(d)** five days of seven hours and 36 minutes per day;
- 26.1.1(e)** 152 hours per each four week period;
- 26.1.1(f)** 160 hours per each four week period with a rostered day off;
or
- 26.1.1(g)** any combination of the above.

(f) a combination of subparagraphs (a), (b) and (c) hereof under which employees may be worked, under subparagraph (c) hereof for up to six months in any year with the balance of the period worked under subparagraphs (a) and or (b) hereof;

(g) such method of working prescribed hours shall be determined by agreement between employer and employee. If no agreement can be reached the matter may be referred to a Board of Reference in accordance with clause 13 of this award. Whilst such Board of Reference is pending the employer may roster employees within the above scope to suit the needs of his/her operation;

26.2 The arrangement for working the average of 38 hours per week is to be agreed between the employer and the employee from the alternatives in clause 26.1.1.

26.3 The agreed hours of work arrangement must meet the following conditions:

26.3.1 A minimum of six hours and a maximum of eleven and a half hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals.

26.3.2 An employee cannot be rostered to work for more than 10 hours per day on more than three consecutive days without a break of at least 48 hours

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<p>(h) notwithstanding the foregoing arrangements for hours of work applying to employees engaged prior to 1 April 1988 shall not be changed without the agreement of the employee or employees in question.</p> <p>26.1.2 Second, by agreement between the employer and the employee and/or the State branch of the union, the arrangement of hours of work can be implemented within any one or combination of the following:</p> <p>(a) 152 hours per each four week period; or</p> <p>(b) 160 hours per each four week period, with a day banked per period up to a maximum of five.</p>	<p>26.3.3 No more than eight days of more than 10 hours may be worked in a four week period.</p> <p>26.3.4 An employee must be given a minimum break of ten hours between the finish of ordinary hours of work on one day and the commencement of ordinary hours of work on the next day. In the case of a changeover of rosters the minimum break must be eight hours.</p> <p>26.3.5 Where the hours of work arrangement provides for 160 hours per four week period with a rostered day off:</p> <p>26.3.5(a) No employee is to work more than ten days in a row without a rostered day off.</p>	

26.1.3 Provided that where the union has not been involved in the consultation process, they should be notified by the employer in writing no less than 28 days before implementation of any agreement reached under paragraph 26.1.2.

26.2 The hours of work arrangement agreed upon in paragraph 26.1.2 hereof shall be subject to the following conditions:

26.2.1 Within a minimum of six hours and a maximum of eleven and a half hours per day and shall be exclusive of meal break intervals, subject to clause 31. Provided that where shifts of more than ten hours per day are rostered for work, employees working such hours cannot be rostered for work on more than three consecutive days without a break of at least 48 hours, and further provided that no more than eight shifts of more than ten hours can be worked in a four week period without consultation with the State branch of the union;

26.2.2 An employee shall be entitled to nine full days off per four week period; and

26.2.3 No employee shall work more than ten days in succession without a rostered day off.

26.3.5(b) Where practicable the rostered day off must be contiguous with an employee's normal days off.

26.3.5(c) Rostered days off may be banked, up to a maximum of five days.

26.3.5(d) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

26.3.5(e) If a rostered day off falls on a public holiday then, where practicable, the next day is to be taken as the rostered day off.

26.3.5(f) The entitlement to a rostered day on full pay is subject to the following:

26.3.5(f)
(i) each day of paid leave, except annual leave and long service leave, and any public holiday occurring during the four week cycle must be regarded as a day worked for accrual purposes; and

26.3.5(f)

(ii) an employee who has not worked a complete four week cycle in order to accrue a rostered day off must be paid a pro rata amount for credits accrued for each day worked in the cycle. The pro rata amount is 24 minutes pay for each eight hour day worked.

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26.4 Make-up time means an arrangement under which an employee takes time off during his or her ordinary hours of work and makes up that time later.

26.5 The employer and a majority of employees in a workplace may agree to introduce make-up time subject to the following conditions:

26.5.1 If an employer intends to introduce make-up time and the Union has members at the particular workplace then the employer must inform the Union of its intention and provide the Union with an opportunity to participate in negotiations relating to make-up time.

26.5.2 After the employer and a majority of employees have agreed to introduce make-up time an employee may elect, with the consent of his or her employer, to work make-up time.

26.5.3 Make-up time arrangements must comply with the conditions set out in clauses 19 - Penalty rates, 26.3 and 27 - Breaks.

26.5.4 The employer must record make-up time arrangements in the time and wages records kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*.

26.6 Any disputes in relation to the practical application of this clause may be dealt with in accordance with clause 11 - Procedure to avoid industrial disputation, or by the establishment of a Board of Reference under s.133 of the Act.

26.3 Spread of hours

Where broken shifts are worked the spread of hours shall not exceed the ordinary hours by more than a total of two hours within the metropolitan area of Sydney, Melbourne and Hobart and three hours in areas outside of the aforesaid metropolitan areas provided that by agreement between the union and an employer the spread of hours shall not exceed the ordinary hours by more than a total of three hours within the metropolitan areas of Sydney, Melbourne and Hobart and four hours in remote or resort areas and provided further that no

26.7 Spread of hours

Where broken shifts are worked the spread of hours can be no greater than twelve hours per day.

spread of hours shall be greater than twelve hours per day.

Current Award	Proposed Order	Comments
<p>26.4 Minimum break between shift</p> <p>The roster for all permanent employees shall provide for a minimum of ten hours break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day. In the case of changeover of rosters, eight hours shall be substituted for ten hours.</p>	<p>26.8 Minimum break between shift</p> <p>The roster for all employees other than casuals will provide for a minimum ten hour break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day. In the case of changeover of rosters, eight hours will be substituted for ten hours.</p>	
<p>26.5 Wage entitlements</p> <p>26.5.1 Employees shall be entitled to a week's wages in accordance with clause 19 of this award for each week of work.</p> <p>26.5.2 Notwithstanding the provisions of this subclause, an employer may, subject to agreement with the State branch of the union, pay wages fortnightly according to the actual hours worked in that fortnightly pay period.</p>	<p>[see clause 21]</p>	
<p>26.6 Sickness on rostered day off</p> <p>Where an employee is sick or injured on his/her rostered day off he/she shall not be entitled to sick pay nor shall the sick pay entitlement be reduced as a result of sickness or injury on that day.</p>	<p>[deleted]</p>	<p>Item 49(8)(c)</p>
<p>26.7 Payday</p> <p>In the event that an employee by virtue of the arrangement of his/her ordinary working hours is rostered off duty on a day which coincides with payday such employee shall be paid no later than the working day immediately following such payday.</p>	<p>[see clause 21]</p>	<p>Item 49(8)(c) and (d)</p>

<p>26.8 Special provisions for 38 hour week</p> <p>In relation to paragraph 26.1.1 hereof an employee shall be entitled to two full days off each week.</p>	<p>[deleted]</p>	<p>Item 49(8)(c)</p>
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Current Award	Proposed Order	Comments
<p>26.9 Special provisions for nineteen day month</p> <p>26.9.1 Where the method of implementation of the 38 hour week is that set out in subparagraph 26.1.1(a) hereof days off shall be by rostering where practicable so this rostered day off in each four week cycle is contiguous with normal rostered day or days off.</p> <p>26.9.2 Where such rostered day off falls on a public holiday the following day may be taken where practicable in lieu thereof.</p> <p>26.9.3 The entitlement to a rostered day off on full pay is subject to the following:</p> <p>(a) Each day of paid leave (not including annual leave and long service leave) and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes;</p> <p>(b) An employee who has not worked a complete four week cycle in order to accrue a rostered day off shall be paid a pro rata amount for credits accrued for each day worked in such cycle payable for the rostered day off (i.e. an amount of 24 minutes for each eight hour day worked or two hours for each 40 hours worked); and</p> <p>(c) For the purpose of this sub-paragraph "worked" includes paid leave referred to in subparagraph 26.9.3(a) hereof.</p>	<p>[see clause 26.3.5]</p>	

<p>26.10 Special provisions for banking of days</p> <p>26.10.1 Where a rostered day off which has resulted from the method of implementation of the 38 hour week set out in subparagraph 26.1.1(b) hereof falls on a public holiday, the following day may be taken where practicable in lieu thereof.</p> <p>26.10.2 Each day of paid leave taken (not including annual leave, long service leave and periods of worker's compensation) and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.</p>	<p>[see clause 26.3.5(e)]</p> <p>[see clause 26.3.5(f)]</p>	
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Current Award	Proposed Order	Comments
<p>27. BREAKS</p>	<p>27. BREAKS</p>	<p>Item 49(8)(c)</p>
<p>27.1 An employee who, pursuant to appendix A, is entitled to a paid rest pause 20 minutes duration after every hour of work shall have one of the paid rest pauses treated as the full shift meal break for the purpose of this clause.</p>	<p>27.1 If an employee, including a casual employee, is required to work for five or more hours in a day he or she must be given an unpaid meal break of no less than 30 minutes. The break must be given no earlier than one hour after starting work and no later than six hours after starting work.</p>	
<p>27.2 Each employee shall be granted a meal interval of not less than 30 minutes to be commenced after completing not less than one hour and not later than six hours of duty. Provided that where it is not possible to grant the meal interval on any day, the said meal interval shall be treated as time worked and be paid at the rate of the day plus half-time additional at the ordinary weekly rate until released for a meal. Provided further where an employee is required to work in excess of five hours after the first meal interval he/she shall be granted a further meal interval of twenty minutes to be treated as time worked.</p>	<p>27.2 If the unpaid meal break is rostered to be taken after five hours of starting work, the employee must be given an additional 20 minute paid meal break. The employer must allow the employee to take this additional meal break no earlier than two hours after starting work and no later than five hours after starting work.</p> <p>27.3 If an employee is not given the unpaid meal break at the time the employer has told him/her it will be given, the employer must pay the employee an extra hourly or part thereof payment at the rate of 0.5 of the ordinary hourly rate from the time the meal break was to commence until either the meal break is given or the shift ends.</p>	

<p>27.3 Where a rostered meal break requires an employee to work for more than five hours before such meal break, then an employee shall be allowed a twenty minute break without loss of pay during such work period at a time suitable to the employer between two and five hours worked.</p>	<p>27.3.1 If clause 27.3 does not apply and an employee is not given a meal break in accordance with clause 27.1 the employer must pay the employee an extra hourly or part thereof payment at the rate of 0.5 of the ordinary hourly rate from the end of six hours until either the meal break is given or the shift ends.</p> <p>27.4 If an employee is required to work more than five hours after he or she is given the unpaid meal break, he or she must be given an additional 20 minute paid break.</p>	
<p>27.4 Notwithstanding the provisions of subclause 27.2 hereof, employees rostered to work more than ten ordinary hours in a shift shall be entitled to two paid twenty minute rest breaks in addition to an unpaid meal break of at least half an hour. In rostering for these breaks, the employer shall make all reasonable efforts to provide these breaks at a time which gives the employee an even mix of work time and breaks.</p>	<p>27.5 If a full-time or regular part-time employee is required to work more than ten ordinary hours in the day, he or she will be given two additional 20 minute paid breaks. In rostering for these breaks, the employer must make all reasonable efforts to ensure an even mix of work time and breaks.</p> <p>27.6 If an employee is required to work more than two hours' overtime after completion of the employee's rostered hours, he or she must be given an additional 20 minute paid break.</p>	

Current Award	Proposed Order	Comments
<p>27.5 Where an employee is required to work overtime and such overtime follows the completion of the employee's normal hours of work a twenty minute paid meal break shall be allowed where such overtime exceeds two hours work.</p>	<p>27.7 An employee who, pursuant to Appendix A, is entitled to a paid rest pause 20 minutes duration after every hour of work may have one of the paid rest pauses treated as the full shift meal break for the purpose of this clause.</p>	
<p>27.6 Notwithstanding the other provisions of this award the meal periods for gaming staff at Wrest Point Casino Hotel and Launceston Country Club shall be as agreed between the State branch of the union and the respective employer.</p>	<p>27.8 Despite the other provisions of this award, the meal periods for gaming staff at Wrest Point Casino Hotel and Launceston Country Club will be as agreed between the State branch of the Union and the respective employer.</p>	
<p>28. OVERTIME</p>	<p>28. OVERTIME</p>	<p>Item 49(8)(c)</p>

<p>28.1 Reasonable Overtime</p> <p>An employer may require an employee - other than a casual employee - to work reasonable overtime at overtime rates. An employer must, if practicable, offer his or her employees the opportunity to work overtime in preference to employing casuals.</p>	<p>28.1 Reasonable overtime</p> <p>An employer may require an employee, other than a casual employee, to work reasonable overtime at overtime rates.</p> <p>[second sentence deleted]</p>	<p>Not allowable</p>
<p>28.2 When is an employee paid at overtime rates?</p> <p>An employee - other than a casual employee - is paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 26.</p>	<p>28.2 When is an employee paid at overtime rates?</p> <p>28.2.1 A full-time employee is paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 26 - Hours of work.</p> <p>28.2.2 A regular part-time employee is paid at overtime rates in the circumstances specified in clause 15.3.7.</p>	
<p>28.3 What are overtime rates?</p> <p>The overtime rate payable to an employee depends on the time at which the overtime is worked.</p> <ul style="list-style-type: none"> · Monday to Friday: <ul style="list-style-type: none"> - one and a half times his or her normal rate of pay for the first two hours of overtime; and - twice his or her normal rate of pay for the rest of the overtime. 	<p>28.3 What are overtime rates?</p> <p>The overtime rate payable to an employee depends on the time at which the overtime is worked.</p> <p>28.3.1 Monday to Friday: one and a half times his or her normal rate of pay for the first two hours of overtime; and twice his or her normal rate of pay for the rest of the overtime.</p> <p>28.3.2 Between midnight Friday and midnight Sunday: twice his or her normal rate of pay for any work done.</p>	

Current Award	Proposed Order	Comments

- Between midnight Friday and midnight Sunday:
 - twice his or her normal rate of pay for any work done.

- On a rostered day off:

- twice his or her normal rate of pay for any work done; and
- he or she must be paid for at least four hours even if he or she works for less than four hours.

The four hour minimum payment does not apply

- to work which is part of the normal roster which began the day before the rostered day off; or
- when overtime worked is continuous from the previous day's duty.

For example: Julie is a full time employee. Her ordinary rate of pay is \$10 per hour. She normally works eight hours per day Monday to Friday. On Tuesday she works 11 hours.

Julie's pay = (8 hours at normal rate) + (3 hours of overtime)

$$= (8 \times \$10) + (2 \times \$15 + 1 \times \$20)$$

$$= \$80 + (\$30 + \$20)$$

$$= \$80 + \$50$$

$$= \$130$$

- Between midnight Friday and midnight Sunday:
 - twice his or her normal rate of pay for any work done.

28.3.3 On a rostered day off: twice his or her normal rate of pay for any work done. He or she must be paid for at least four hours even if he or she works for less than four hours.

28.3.4 The four hour minimum payment does not apply to work which is part of the normal roster which began the day before the rostered day off; or when overtime worked is continuous from the previous day's duty.

For example: Julie is a full-time employee. Her ordinary rate of pay is \$10 per hour. She normally works eight hours per day Monday to Friday. On Tuesday she works 11 hours.

$$\begin{aligned}
 & \text{Julie's} \\
 & \text{pay} = (8 \\
 & \text{hours at} \\
 & \text{normal} \\
 & \text{rate)} + \\
 & (3 \text{ hours} \\
 & \text{of} \\
 & \text{overtime}) \\
 & = (8 \\
 & \text{hours} \times \\
 & \$10) + \\
 & (2 \text{ hours} \\
 & \times \$15) + \\
 & (1 \text{ hour} \times \\
 & \$20) \\
 & = \$80 + \\
 & (\$30 + \\
 & \$20) \\
 & = \$80 + \\
 & \$50 \\
 & = \$130
 \end{aligned}$$

For example: John is asked to work on his rostered day off from 8 a.m. to 11 a.m. He is normally paid \$10 per hour. John has worked 3 hours but must be paid for at least four.

$$\text{John's pay} = \$20 \times 4$$

$$= \$80$$

The four hour minimum payment does not apply to work:

· On a rostered day off:

- twice his or her normal rate of pay for any work done;
and

- he or she must be paid for at least four hours even if he or she works for less than four hours.

Current Award	Proposed Order	Comments
<p>For example: John is asked to work on his rostered day off from 8am to 11am.</p> <p>He is normally paid \$10 per hour. John has worked 3 hours but must be paid for at least four.</p> <p>John's pay = \$20 x 4 = \$80</p> <p>The four hour minimum payment does not apply to work:</p> <ul style="list-style-type: none"> - which is part of the normal roster which began the day before the rostered day off; or - when overtime worked is continuous from the previous day's duty. 	<ul style="list-style-type: none"> - which is part of the normal roster which began the day before the rostered day off; or - when overtime worked is continuous from the previous day's duty. 	
<p>28.4 Overtime Stands Alone</p> <p>Overtime worked on any day stands alone.</p> <p>For example: Jenny is a full time employee. Her ordinary rate of pay is \$10 per hour. She works 2 hours overtime on Monday and one hour overtime on Tuesday.</p> <p>Jenny's pay = Monday = (8 hours at normal rate) + (2 hours of overtime)</p> <p style="text-align: right;">= (8 x \$10) + (2 x \$15) = \$80 +</p>	<p>28.4 Overtime stands alone</p> <p>Overtime worked on any day stands alone.</p> <p><i>For example: Jenny is a full-time employee. Her ordinary rate of pay is \$10 per hour. She works 2 hours overtime on Monday and one hour overtime on Tuesday.</i></p> <p style="text-align: center;"><i>Jenny's pay</i></p> <p style="text-align: right;"><i>Monday = (8 hours at normal</i></p>	

\$30
 = \$110
 Tuesday
 = (8
 hours at
 normal
 rate) + (1
 hour of
 overtime)
 = (8 x
 \$10) + (1
 x \$15)
 = \$80 +
 \$15
 = \$95

You do not treat the one hour of overtime worked on Tuesday as the third hour of overtime. It is paid at one and a half times her normal rate of pay not twice her normal rate of pay. This is because overtime worked on any day stands alone.

*rate) +
 (2 hours
 of
 overtime)
 = (8
 hours x
 \$10) +
 (2 hours
 x \$15)
 = \$80 +
 \$30
 = \$110*

*Tuesday
 = (8
 hours at
 normal
 rate) +
 (1 hour
 of
 overtime)
 = (8
 hour x
 \$10) +
 (1 hour x
 \$15)
 = \$80 +
 \$15
 = \$95*

*You do
 not treat
 the one
 hour of
 overtime
 worked
 on
 Tuesday
 as the
 third
 hour of
 overtime.
 It is paid
 at one
 and a*

half
times her
normal
rate of
pay not
twice her
normal
rate of
pay. This
is
because
overtime
worked
on any
day
stands
alone.

Current Award	Proposed Order	Comments
<p>28.5 Does an employee get a break after working overtime?</p> <p>If starting work at the employees next rostered starting time would mean that the employee did not receive a full 10 hour break then <u>either</u>:</p> <ul style="list-style-type: none"> · the employee may - without loss of pay - start work at such a later time as is necessary to ensure that he or she receives a break of at least 10 hours; or · the employer must pay the employee overtime rates for all work performed until the employee has received a break of at least 10 hours. <p>For example: George normally works from 9am to 6pm Monday to Friday. On Tuesday he works overtime until midnight.</p> <p>If George's employer wants him to start work at 9am on Wednesday then George must be paid at overtime rates until he has received a break from work of at least 10 hours.</p> <p>Alternatively George could start work at 10am on Wednesday and work until</p>	<p>28.5 Does an employee get a break after working overtime?</p> <p>If starting work at the employee's next rostered starting time would mean that the employee did not receive a full ten hour break then either: the employee may - without loss of pay - start work at such a later time as is necessary to ensure that he or she receives a break of at least ten hours; or the employer must pay the employee overtime rates for all work performed until the employee has received a break of at least ten hours.</p> <p><i>For example: George normally works from 9 a.m. to 6 p.m. Monday to Friday. On Tuesday he works overtime until midnight. If George's employer wants him to start work at 9 a.m. on Wednesday then George must be paid at overtime rates until he has received a break from work of at least 10 hours. Alternatively George could start work at 10 a.m. on Wednesday and work until his normal finishing time of 6p.m. George would then receive his normal day's pay even though he has worked one hour less.</i></p>	

his normal finishing time of 6pm. George would then receive his normal day's pay even though he has worked one hour less.

28.6 Where employees swap shifts

If the employee has swapped a shift with another employee which would mean that the employee cannot receive at least 10 hours break before their next rostered start time then either:

- the employee may - without loss of pay - start work at such a later time as is necessary to ensure that he or she receives a break of at least 8 hours; or
- the employer must pay the employee overtime rates for all work performed until the employee has received a break of a least 8 hours.

28.6 Where employees swap shifts

If the employee has swapped a shift with another employee which would mean that the employee cannot receive at least ten hours break before their next rostered start time then either:

- 28.6.1** the employee may, without loss of pay, start work at such a later time as is necessary to ensure that he or she receives a break of at least eight hours; or
- 28.6.2** the employer must pay the employee overtime rates for all work performed until the employee has received a break of a least eight hours.

Current Award

28.7 Time off instead of payment for overtime

Despite subclause 28.2 an employee may choose, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer. This agreement must be in writing. The employee must take the time off within four weeks of working the overtime.

If an employee takes time off instead of payment for overtime then the amount of time off is to be equivalent to the pay the employee would have otherwise received for working the overtime.

If requested by an employee an employer must within one week of receiving a request pay the employee for any overtime worked. The employee must be paid at overtime rates.

For example: Jodie is a full time employee. Her ordinary rate of pay is \$10 per hour. She works three hours overtime on Wednesday.

Jodie's pay = (8 hours at normal rate) + (3 hours overtime)

$$= (8 \text{ hours}) + (2 \times 1.5 + 1 \times 2)$$

Proposed Order

28.7 Time off instead of payment for overtime

28.7.1 Despite clause 28.1 an employee may choose, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer. This agreement must be in writing. The employee must take the time off within four weeks of working the overtime.

28.7.2 If an employee takes time off instead of payment for overtime then the amount of time off is to be equivalent to the pay the employee would have otherwise received for working the overtime.

28.7.3 If requested by an employee an employer must within one week of receiving a request pay the employee for any overtime worked. The employee must be paid at overtime rates.

For example: Jodie is a full-time employee. Her ordinary rate of pay is \$10 per hour. She works three hours overtime on Wednesday.

$$Jodie's \text{ pay} = (8 \text{ hours at normal rate}) + (3 \text{ hours overtime})$$

$$= (8 \text{ hours}) + (2$$

Comments

$$= 8 + 5$$

= 13 hours pay

Jodie's employer must give her 13 hours pay. Alternatively Jodie and her employer may agree, in writing, to Jodie taking some or all of her '13 hours pay' as time off instead. They may agree that Jodie will use eight hours to take a day off and be paid the rest of her overtime - five hours pay.

$$\begin{aligned} & \text{hours} \times 1.5) + (1 \\ & \text{hour} \times 2) \\ & = 8 + (3 + 2) \\ & = 13 \text{ hours pay} \end{aligned}$$

Jodie's employer must give her 13 hours pay. Alternatively Jodie and her employer may agree, in writing, to Jodie taking some or all of her '13 hours pay' as time off instead. They may agree that Jodie will use eight hours to take a day off and be paid the rest of her overtime - five hours pay.

29. ROSTER

29.1 A roster for all permanent employees showing normal starting and finishing times and the name of each employee shall be prepared by the employer and shall be posted in a conspicuous place or places accessible to the employees concerned.

29. ROSTER

29.1 A roster for full-time and regular part-time employees showing normal starting and finishing times and the name of each employee shall be prepared by the employer and shall be posted in a conspicuous place accessible to the employees concerned.

Item 49(7)(a)
Item 49(8)(c)

Current Award	Proposed Order	Comments
<p>29.2 In the case of employees working under paragraph 26.1.1 the roster shall be alterable by mutual consent at any time or by amendment of the roster on seven days notice. Where practicable two weeks notice of rostered day or days off shall be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.</p>	<p>29.2 The roster shall be alterable by mutual consent at any time or by amendment of the roster on seven days notice. Where practicable two weeks notice of rostered day or days off should be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.</p>	
<p>29.3 In the case of employees working under paragraph 26.1.2 the roster shall be alterable by mutual consent at any time or by amendment of the roster on fourteen days' notice. Where practicable three weeks' notice of rostered day or days off shall be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.</p>	<p>[deleted]</p>	
<p>PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS</p> <p>30. ANNUAL LEAVE</p>	<p>30. ANNUAL LEAVE</p>	<p>Item 49(8)(c)</p>
<p>30.1 When can an employee get annual leave?</p> <p>The employer must grant an employee annual leave after the employee has been in continuous service for at least 12 months. Annual leave counts as time worked for calculating the 12 months' continuous service after the first year.</p>	<p>30.1 How long is annual leave?</p> <p>An employee other than a casual employee is entitled to at least four weeks annual leave after every twelve months continuous service.</p> <p>30.2 What are the pay rates for annual leave?</p> <p>The pay rate for annual leave is the employee's pay rate at the time the employee takes the annual leave, plus 17.5 per cent of that rate. Current pay rates are in clause 18.</p> <p>30.3 When to take annual leave</p> <p>An employee may take annual leave at a time agreed with the employer within twelve months of accrual, unless alternative arrangements are agreed.</p>	

<p>30.2 How long is annual leave?</p> <p>The employer must grant an employee at least four weeks annual leave after every 12 months continuous service.</p>		
<p>30.3 What are the pay rates for annual leave?</p> <p>The pay rate for annual leave is the employee's pay rate at the time the employee takes the annual leave, plus 17.5 per cent of that rate. Current pay rates are in clause 19.</p>		

Current Award	Proposed Order	Comments
<p>30.4 When to take annual leave</p> <p>An employee must be allowed to take annual leave within four months after it is due. In the alternative the employee may agree to extend this period up to 12 months.</p>	<p>30.4 How much notice?</p> <p>The employer and employee shall seek to reach agreement on the taking of annual leave at a mutually convenient time. In the absence of agreement the employer may give at least fourteen days notice of the commencement of leave or part of leave which is due to the employee.</p>	
<p>30.5 How much notice?</p> <p>The employer and employee shall seek to reach agreement on the taking of annual leave at a mutually convenient time. In the absence of agreement the employer may give at least 14 days notice of the commencement of leave or part of leave which is due to the employee.</p>	<p>30.5 Payment instead of leave</p> <p>An employee must take annual leave. However, if the employee leaves or is dismissed, the employer must pay the employee any leave entitlement including a proportionate amount for each full month worked since the employee began working or last qualified for leave. Such pro rata annual leave pay does not include leave loading.</p>	
<p>30.6 Payment instead of leave</p> <p>An employee must take annual leave unless:</p> <ul style="list-style-type: none"> · the employer pays the employee a proportionate amount on termination or resignation under subclause 30.7; · the employee chooses payment instead of a public holiday under clause 30.8. 		

<p>30.7 Proportionate pay</p> <p>If the employee leaves or is dismissed, the employer must pay the employee one twelfth of four weeks pay at award rates for each full month the employee has worked since she or he last qualified for leave.</p> <p>If the employee hasn't qualified for leave yet, the employer must pay him or her a proportionate amount for each full month worked since the employee began working.</p> <p>Proportionate pay does not include leave loading.</p>	<p>[see clause 30.5]</p>	
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Current Award	Proposed Order	Comments
<p>30.8 Public holidays falling within annual leave</p> <p>30.8.1 If a public holiday falls within an employee's annual leave, is prescribed in the award, and is on a day which would have been an ordinary working day, then:</p> <ul style="list-style-type: none"> · extra time equivalent to the public holiday is added to the employee's annual leave; or · the employee can choose to be paid for the public holiday instead of having the extra time. <p>30.8.2 The employee won't receive any pay for the public holiday unless:</p> <ul style="list-style-type: none"> · the employee starts work at the next rostered starting time on the first working day after his or her annual leave ends; or · the employee has a reasonable cause for starting late. 	<p>30.6 Public holidays falling within annual leave</p> <p>30.6.1 If a public holiday falls within an employee's annual leave, is prescribed in the award, and is on a day which would have been an ordinary working day, then:</p> <ul style="list-style-type: none"> · extra time equivalent to the public holiday is added to the employee's annual leave; or · the employee can choose to be paid for the public holiday instead of having the extra time. <p>30.6.2 The employee won't receive any pay for the public holiday unless:</p> <ul style="list-style-type: none"> · the employee starts work at the next rostered starting time on the first working day after his or her annual leave ends; or · the employee has a reasonable cause for starting 	

	late.	
<p>30.9 What if a new employer takes over the business?</p> <p>If a new employer takes over the business from the current employer (as a successor, assignee or transferee), then employees will be treated as though they have been working for the same employer for the whole time. This means that the new employer will be responsible for any annual leave or proportionate pay which employees have earned while working for the current employer.</p>	[see clause 6]	
<p>30.10 What does not break the continuous service?</p> <p>30.10.1 The following events do not break an employee's continuous service:</p> <ul style="list-style-type: none"> · sick leave; · leave as the result of an accident; · leave lawfully granted by the employer; or · absence for a reasonable cause. The employee must prove that the leave was reasonable. 	[see clause 3.8.3]	

Current Award	Proposed Order	Comments
<p>30.10.2 It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.</p>		
<p>30.11 How other absence may lead to a break in continuous service?</p> <p>Any other absence from work does not break continuity of service unless the employer notifies the employee within 14 days of the employee returning to work after the absence. The employer must tell the employee in writing.</p>		

<p>30.12 Absence by individual</p> <p>If an individual employee is absent, the employer must tell that employee by:</p> <ul style="list-style-type: none"> · giving the notice to him or her personally; or · posting the notice to his or her last known address. 		
<p>30.13 Absence by a group</p> <p>If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the same day.</p>		
<p>30.14 Which absences are counted as time worked?</p> <p>30.14.1 In calculating the 12 months' continuous service, the only absences counted as time worked are the following:</p> <ul style="list-style-type: none"> · up to 152 ordinary working hours in a 12 month period because of sickness or accident; · long service leave that an employee takes under the relevant State long service leave legislation; and · annual leave. 		

Current Award	Proposed Order	Comments
<p>30.14.2 Where a period of work is less than 12 months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.</p>		
<p>31. SICK LEAVE</p>	<p>31. PERSONAL LEAVE</p>	<p>Item 49(8)(c)</p>

[not set out - see Hospitality Award]	31.1 Amount of paid personal leave	
	<p>31.1.1 Paid personal leave is available to an employee when he or she is absent due to:</p> <ul style="list-style-type: none"> · personal illness or injury (sick leave); or · for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or · because of bereavement on the death of an immediate family or household member (bereavement leave). 	
	31.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:	
	<p style="text-align: center;"><u>Length of time worked for the employer Personal leave</u></p> <p style="text-align: center;">(hours)</p> <p style="text-align: center;">Less than 1 month 16 1 month to less than 3 months 32 3 months to less than 6 months 48 6 months to less than 12 months 92 Each year thereafter 92</p>	
	<p>31.1.3 In any year unused personal leave accrues by the lesser of:</p> <p>31.1.3(a) 76 hours less the number of hours of sick leave taken during the year; or</p> <p>31.1.3(b) the balance of the year's unused personal leave.</p>	
	31.1.4 Personal leave may accumulate to a maximum of 760 hours.	

Current Award	Proposed Order	Comments

	31.2 Immediate family or household	
	<p>31.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:</p> <p style="padding-left: 40px;">31.2.1(a) a member of the employee's immediate family; or</p> <p style="padding-left: 40px;">31.2.1(b) a member of the employee's household.</p>	
	<p>31.2.2 The term immediate family includes:</p> <p style="padding-left: 40px;">31.2.2(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</p> <p style="padding-left: 40px;">31.2.2(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.</p>	
	31.3 Sick leave	
	<p>31.3.1 Definition</p> <p style="padding-left: 40px;">Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of his or her personal illness or injury.</p>	
	<p>31.3.2 Entitlement</p> <p style="padding-left: 40px;">31.3.2(a) The amount of personal leave an employee may take as sick leave depends on how long he or she has worked for the employer and accrues as follows:</p>	

	<p style="text-align: center;">Length of time worked for Rate of accrual of paid <u>the employer sick leave</u> (hours)</p> <p style="text-align: center;">Less than 1 month 0 1 month to less than 3 months 16 3 months to less than 6 months 32 6 months to less than 12 months 76 Each year thereafter 76</p>	
	<p>31.3.2(b) After the first six months of service, an employee must be paid for any sick leave to which he or she was not entitled, due to insufficient service, up to a maximum of 76 hours.</p> <p>31.3.2(c) Accumulated personal leave may be used as sick leave if the current sick leave entitlement is exhausted.</p>	
	<p>31.3.3 Employee must give notice</p> <p>31.3.3(a) Before taking sick leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.</p> <p>31.3.3(b) The notice must include:</p> <ul style="list-style-type: none"> · the nature of the injury or illness (if known); and · how long the employee expects to be away from work. <p>31.3.3(c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.</p>	
	<p>31.3.4 Evidence supporting claim</p> <p>The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, that the employee was unable to work because of injury or personal illness.</p>	

Current Award	Proposed Order	Comments
	<p>31.3.5 The effect of workers' compensation</p> <p>If an employee is receiving workers' compensation payments, he or she is not entitled to sick leave.</p>	
	<p>31.4 Bereavement leave</p>	
	<p>31.4.1 Paid leave entitlement</p> <p>An employee other than a casual is entitled to use up to two days personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household in Australia dies.</p>	
	<p>31.4.2 Unpaid leave entitlement</p> <p>Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, he or she is entitled to up to two days unpaid bereavement leave.</p>	
	<p>31.4.3 Evidence supporting claim</p> <p>The employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household.</p>	
	<p>31.5 Carer's leave</p>	

31.5.1 Paid leave entitlement

An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

Current Award**Proposed Order****Comments****31.5.2 Notice required**

31.5.2(a) Before taking carer's leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.

31.5.2(b) The notice must include:

- the name of the person requiring care and support and his or her relationship to the employee;
- the reasons for taking such leave; and
- the estimated length of absence.

31.5.2(c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

31.5.3 Evidence supporting claim

The employee must, if required by the employer, 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.

	<p>31.5.4 Unpaid leave</p> <p>An employee may take unpaid carer's leave by agreement with the employer.</p>	
<p>32. BEREAVEMENT LEAVE</p> <p>[not set out, see Hospitality Award]</p>	[see clause 31.4]	

Current Award	Proposed Order	Comments
<p>33. PARENTAL LEAVE</p> <p>[not set out, see Hospitality Award]</p>	<p>32. PARENTAL LEAVE</p> <p>This clause will only apply to employees who are employed by employers who are members of the Australian Hotels Association or the Motor Inn, Motel and Accommodation Association as at 23 June 1995.</p> <p>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.</p>	Item 49(8)(c)
	<p>32.1 Definitions</p>	
	<p>32.1.1 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.</p>	
	<p>32.2 Basic entitlement</p>	

32.2.1 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.

32.2.2 Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances:

32.2.2(a) for maternity and paternity leave, an unbroken period of one week at the time of the birth of the child;

32.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

Current Award	Proposed Order	Comments
	32.3 Maternity leave	
	<p>32.3.1 An employee will provide to the employer at least ten weeks in advance of the expected date of commencement of parental leave:</p> <p>32.3.1(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;</p> <p>32.3.1(b) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken; and</p> <p>32.3.1(c) 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.</p> <p>32.3.2 Subject to clause 32.2.1 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 the birth.</p> <p>32.3.3 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</p>	

may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

32.3.4 Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid special maternity leave of such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the birth, an employee may be entitled to paid sick leave in lieu of, or in addition to, special maternity leave.

Current Award	Proposed Order	Comments
	<p>32.3.5 Where leave is granted under clause 32.3.4, 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.</p>	
	<p>32.4 Paternity leave</p>	
	<p>An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:</p> <p>32.4.1 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</p> <p>32.4.2 written notification of the dates on which he proposes to start and finish the period of paternity leave; and</p> <p>32.4.3 a statutory declaration stating:</p> <p>32.4.3(a) he will take that period of paternity leave to become the primary care-giver of a child;</p> <p>32.4.3(b) particulars of any period of maternity leave sought or taken by his spouse; and</p> <p>32.4.3(c) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.</p>	

	32.5 Adoption leave	
	<p>32.5.1 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.</p> <p>32.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:</p>	

Current Award	Proposed Order	Comments
	<p>32.5.2(a) the employee is seeking adoption leave to become the primary care-giver of the child;</p> <p>32.5.2(b) particulars of any period of adoption leave sought or taken by the employee's spouse; and</p> <p>32.5.2(c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.</p> <p>32.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.</p>	
	32.5.4 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.	
	32.6 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.	

32.7 Parental leave and other entitlements

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

Current Award**Proposed Order****Comments****32.8 Transfer to a safe job**

32.8.1 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.

32.8.2 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.

32.9 Returning to work after a period of parental leave

32.9.1 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.

32.9.2 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 clause 32.8, the employee will be entitled to return to the position they held immediately before such transfer.

32.9.3 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.

32.10 Replacement employees

	32.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.	
	32.10.2 A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.	

Current Award	Proposed Order	Comments
33A. PERSONAL/CARER'S LEAVE [not set out, see Hospitality Award]	[see clause 31]	
33B JURY SERVICE	33. JURY SERVICE	Item 49(8)(c)
33B.1.1 An employee on weekly or part-time weekly hiring required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of ordinary wage he/she would have received Monday to Friday in respect of the ordinary time he/she would have worked had he/she not been on jury service.	33.1 An employee other than a casual employee required to attend for jury service during their ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of the ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service.	
33B.1.2 An employee shall notify the employer as soon as possible for the date upon which they are required to attend for jury service.	33.2 An employee shall notify the employer as soon as possible for the date upon which they are required to attend for jury service.	
33B.1.3 Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount paid in respect of such jury service.	33.3 Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount paid in respect of such jury service.	
34. PUBLIC HOLIDAYS	34. PUBLIC HOLIDAYS	

34.1 Permanent employees, shall be entitled to the following holidays without loss of pay:

New South Wales Victoria

New Year's Day New Year's Day
 Australia Day Australia Day
 Good Friday Good Friday
 Easter Saturday Easter Saturday
 Easter Monday Easter Monday
 Anzac Day Anzac Day
 Sovereign's Birthday Sovereign's Birthday
 Labour Day Labour Day
 Union Picnic Day Union Picnic Day
 Christmas Day Christmas Day
 Boxing Day Boxing Day

34.1 Employees, other than casuals, shall be entitled to the following holidays without loss of pay:

New South Wales Victoria

New Year's Day New Year's Day
 Australia Day Australia Day
 Good Friday Good Friday
 Easter Saturday Easter Saturday
 Easter Monday Easter Monday
 Anzac Day Anzac Day
 Sovereign's Birthday Sovereign's Birthday
 Labour Day Labour Day
 Union Picnic Day Union Picnic Day
 Christmas Day Christmas Day
 Boxing Day Boxing Day

Current Award

Queensland Tasmania

New Year's Day New Year's Day
 Australia Day Australia Day
 Good Friday Good Friday
 Easter Saturday Easter Saturday
 Easter Monday Easter Monday
 Anzac Day Anzac Day
 Sovereign's Birthday Sovereign's Birthday
 Labour Day Labour Day
 Exhibition Day union Picnic Day
 Christmas Day Christmas Day
 Boxing Day Boxing Day

or such other day as is generally observed in the locality as a substitute for any of the said days respectively:

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Queensland Tasmania

New Year's Day New Year's Day
 Australia Day Australia Day
 Good Friday Good Friday
 Easter Saturday Easter Saturday
 Easter Monday Easter Monday
 Anzac Day Anzac Day
 Sovereign's Birthday Sovereign's Birthday
 Labour Day Labour Day
 Exhibition Day Union Picnic Day
 Christmas Day Christmas Day
 Boxing Day Boxing Day

or such other day as is generally observed in the locality as a substitute for any of the said days respectively:

Comments

34.1.1 In Southern Tasmania union Picnic Day shall be observed on Regatta Day. For the purpose of this subclause Southern Tasmania includes Oatlands and all towns south of Oatlands but excluding areas excluded in the State Proclamation regarding this day;

34.1.1 In Southern Tasmania union Picnic Day shall be observed on Regatta Day. For the purpose of this clause Southern Tasmania includes Oatlands and all towns south of Oatlands but excluding areas excluded in the State Proclamation regarding this day;

<p>34.1.2 In Northern Tasmania union Picnic Day shall be observed on Recreation Day which is the 1st Monday in November of each year. For the purpose of this subclause Northern Tasmania includes all towns north of Oatlands.</p>	<p>34.1.2 In Northern Tasmania Union Picnic Day shall be observed on Recreation Day which is the 1st Monday in November of each year. For the purpose of this clause Northern Tasmania includes all towns north of Oatlands.</p>	
<p>34.2 An employee in the employ of one employer shall not be entitled to receive in any one calendar year both days as union Picnic Day Holidays, but shall only be entitled to one of them.</p>	<p>34.2 An employee in the employ of one employer shall not be entitled to receive in any one calendar year both days as Union Picnic Day holidays, but shall only be entitled to one of them.</p>	
<p>34.3 Payment for work performed on a public holiday prescribed in subclause 34.1 hereof shall be in accordance with subclause 20.2.</p>	<p>34.3 Payment for work performed on a public holiday prescribed in clause 34.1 hereof shall be in accordance with clause 19.2.</p>	

Current Award	Proposed Order	Comments
<p>34.4 Provided that when an employee is absent from his or her employment only on one working day or part of a day before or after a holiday, except on account of illness or other legitimate reason, he or she shall not suffer loss of payment for more than one day of the holidays.</p>	<p>34.4 Provided that when an employee is absent from his or her employment only on one working day or part of a day before or after a holiday, except on account of illness or other legitimate reason, he or she shall not suffer loss of payment for more than one day of the holidays.</p>	
<p>34.5 Where in a State or Territory or locality within a State or Territory an additional public holiday (other than Easter Saturday) is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the State or Territory or a locality thereof, other than by those covered by federal awards, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such day shall be deemed to be a holiday for the purposes of this award, for employees covered by this award who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required. (The insertion of this provision shall not of itself prejudice the right of the Union to make application for variation of this award in respect to Easter Saturday).</p>	<p>34.5 Where in a State or Territory or locality within a State or Territory an additional public holiday (other than Easter Saturday) is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the State or Territory or a locality thereof, other than by those covered by federal awards, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such day shall be deemed to be a holiday for the purposes of this award, for employees covered by this award who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required. (The insertion of this provision shall not of itself prejudice the right of the Union to make application for variation of this award in respect to Easter Saturday).</p>	

34.6 Where an employee's rostered day or days off coincide with a holiday prescribed in this award, the holiday shall not be a holiday for such employee and the holiday shall be substituted in one of the methods following:

34.6.1 one day with pay added to the annual leave;

34.6.2 payment of one day's pay shall be made to the employee on the next succeeding pay day;

34.6.3 such holiday may be allowed off with pay to the employee within 28 days after such holiday falls;

34.6.4 one of the above methods must be mutually agreed upon by the employee and the employer, failing such agreement the provisions prescribed in paragraph 34.6.1 hereof shall apply.

34.6 Where an employee's rostered day or days off coincide with a holiday prescribed in this award, the holiday shall not be a holiday for such employee and the holiday shall be substituted in one of the methods following:

34.6.1 one day with pay added to the annual leave;

34.6.2 payment of one day's pay shall be made to the employee on the next succeeding pay day;

34.6.3 such holiday may be allowed off with pay to the employee within 28 days after such holiday falls;

34.6.4 one of the above methods must be mutually agreed upon by the employee and the employer, failing such agreement the provisions prescribed in clause 34.6.1 hereof shall apply.

Current Award	Proposed Order	Comments
<p>PART 8 - TRANSFERS TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK</p> <p>35. PROVISION OF EMPLOYEE ACCOMMODATION AND MEALS</p>	<p>35. PROVISION OF EMPLOYEE ACCOMMODATION AND MEALS</p>	<p>Item 49(8)(c)</p>
<p>35.1 Right to Make Deductions</p> <p>When an employer provides his or her employees with accommodation, meals or both then the employer may deduct an amount of money from the employee's wages in accordance with this clause.</p>	<p>35.1 Right to make deductions</p> <p>When an employer provides his or her employees with accommodation, meals or both then the employer may deduct an amount of money from the employee's wages in accordance with this clause.</p>	

<p>35.2 Adult employees</p> <p>The amounts set out in the table below may be deducted from the wages of an adult employee for the provision of accommodation, meals or both by their employer. The same amounts may be deducted from the wages of a junior employee getting adult wages.</p>	<p>35.2 Adult employees</p> <p>The amounts set out in the table below may be deducted from the wages of an adult employee for the provision of accommodation, meals or both by their employer. The same amounts may be deducted from the wages of a junior employee getting adult wages.</p>	
<p><i>[formula not reproduced]</i></p>	<p><i>[formula not reproduced]</i></p>	
<p>35.3 Junior employees</p> <p>The amounts set out in the table below may be deducted from the wages of a junior employee who is being paid junior rates of pay for the provision of accommodation, meals or both by their employer. The amount which may be deducted depends on the age of the employee.</p> <p><i>[formula not reproduced]</i></p>	<p>35.3 Junior employees</p> <p>The amounts set out in the table below may be deducted from the wages of a junior employee who is being paid junior rates of pay for the provision of accommodation, meals or both by their employer. The amount which may be deducted depends on the age of the employee.</p> <p><i>[formula not reproduced]</i></p>	
<p>35.4 Deductions for meals</p> <p>An employer may deduct an amount from an employee's wages for providing the employee with a meal only if:</p> <ul style="list-style-type: none"> · the employee does not live in accommodation provided by the employer; and · the meal is provided during the employee's normal working hours. 	<p>35.4 Deductions for meals</p> <p>An employer may deduct an amount from an employee's wages for providing the employee with a meal only if:</p> <ul style="list-style-type: none"> · the employee does not live in accommodation provided by the employer; and · the meal is provided during the employee's normal working hours. 	

Current Award	Proposed Order	Comments
<p>35.5 Standard of Accommodation</p> <p>Rooms provided to employees must be fitted with adequate heating and cooling appliances.</p>	<p>[deleted]</p>	<p>Not allowable</p>

36. TRAVELLING TRANSPORT AND FARES		
<p>36.1 Working Late</p> <p>When an employer requires an employee to work until it is too late to travel by his or her normal method of transport home the employer must either:</p> <ul style="list-style-type: none"> · provide transport for the employee to get home free of charge; or · accommodation for the night free of charge. 	<p>[see clause 23 under "Travelling Allowance"]</p>	<p>Item 49(8)(c)</p>
<p>36.2 Working Early</p> <p>When an employer requires an employee to start work before his or her normal starting time and before his or her normal method of transport to work is available the employer must either:</p> <ul style="list-style-type: none"> · provide transport for the employee to get to work; or · pay the cost of transport for the employee to get to work. 	<p>[see clause 23 under "Travelling Allowance"]</p>	
<p>36.3 Working away from usual place of work</p> <p>This clause applies where an employer requires a permanent employee to work at a place more than 80 kilometres from the employees' usual place of work. In these circumstances the employer must pay the employee an amount equal to the cost of fares reasonably spent by the employee in travelling from the employees usual place of work to the new place of work.</p>	<p>[see clause 23 under "Travelling Allowance"]</p>	

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<p>However the employer may recover any amount paid to an employee under this subclause if the employee concerned leaves his or her employment or is dismissed for misconduct within three months of receiving such a payment.</p>		
<p>PART 9 - TRAINING AND RELATED MATTERS</p> <p>37. TRAINING</p>	<p>[deleted]</p>	<p>Item 49(8)(d)</p>
<p>37.1 Application</p> <p>37.1.1 Notwithstanding any of the following the rights and obligations of the parties shall be preserved.</p> <p>37.1.2 This clause shall only apply to an employer where agreement is reached between the employer, employees and the Branch of the Union for the TASK Program to be implemented.</p> <p>37.1.3 Employee participation in TASK shall be voluntary.</p> <p>37.1.4 This clause shall not apply to apprentices employed under clause 18 of this award.</p>		
<p>37.2 Definitions</p> <p>37.2.1 For the purposes of this clause:</p> <p style="padding-left: 40px;">(a) Training and Skills Program (TASK) is a Commonwealth Government Program, the objective of which is to assist the employment retention and to improve the skills of employees of the employer who would otherwise be retrenched, or who are working short-time or down-time situations and to improve training levels undertaken by industry;</p>		

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(b) A Co-ordination Committee is a committee made up of equal numbers of employer and employee representatives at the enterprise level who shall oversee the development and implementation of the TASK training plan. For the purposes of this clause where a consultative committee and/or training committee is presently established at an enterprise, such committee shall, if appropriate, constitute the Co-ordination Committee;

(c) A TASK training plan is a plan developed and implemented by the Co-ordination Committee to meet the objectives of the TASK program and the specific requirements of the enterprise and industry; and

(d) A TASK employee is an employee who is undergoing training endorsed by a Co-ordination Committee and receiving a training wage while engaged in TASK activities.

37.3 Training conditions

37.3.1 Employees approved to undertake the TASK program shall be required to attend the on and off-the-job training prescribed in the relevant Training Plan endorsed by the Co-ordination Committee.

37.3.2 On any day or part thereof an employee participating in the TASK program may only be directed to undertake activities under the TASK program guidelines.

37.3.3 The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

37.4 Employment conditions

37.4.1 Irrespective of TASK activities employees shall maintain their employment status and the accrual of all entitlements and continuity of service provided for in the award including sick leave, annual leave, long service leave, holidays, superannuation, parental leave shall not be affected.

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<p>37.4.2 Employees engaged in TASK are permitted to be absent from work without loss of continuity of employment to attend off-the-job training in accordance with the training plan.</p>		
<p>37.5 Wages</p> <p>When engaged in TASK employees' wage entitlements shall be 80% of their wages they would have received had they not been on TASK training plans.</p>		
<p>38. RELATIONSHIP TO THE NATIONAL TRAINING WAGE INTERIM AWARD 1994</p> <p>A party to this award shall comply with the terms of the National Training Wage Interim Award 1994, as varied, as though bound by clause 3 of that award.</p>	<p>36. RELATIONSHIP TO THE NATIONAL TRAINING WAGE INTERIM AWARD 1994</p> <p>A party to this award shall comply with the terms of the National Training Wage Interim Award 1994, as varied, as though bound by clause 3 of that award.</p>	
<p>PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES</p> <p>39. ACCIDENT PAY</p>	<p>37. ACCIDENT PAY</p>	
<p>39.1 From the commencement of this award should an employee meet with an accident at his/her place of employment and is subject to and qualifies for compensation under the Accident Compensation Act presently in force in the States and areas covered by this award such employee shall have the amount received by way of compensation increased by the employer to the amount of the usual award weekly rate ruling at the time of such accident. The payment made by the employer shall be limited to a maximum period of 26 weeks.</p>	<p>37.1 From the commencement of this award should an employee meet with an accident at his/her place of employment and is subject to and qualifies for compensation under the Accident Compensation Act presently in force in the States and areas covered by this award such employee shall have the amount received by way of compensation increased by the employer to the amount of the usual award weekly rate ruling at the time of such accident. The payment made by the employer shall be limited to a maximum period of 26 weeks.</p>	
<p>39.2 For the purpose of this clause "place of employment" to a weekly employee shall include on the way to work and on the way home from work.</p>	<p>37.2 For the purpose of this clause place of employment to a weekly employee shall include on the way to work and on the way home from work.</p>	
<p>39.3 For the purpose of this clause a casual employee "place of employment" shall include travelling directly from or to their place of employment.</p>	<p>37.3 For the purpose of this clause a casual employee "place of employment" shall include travelling directly from or to their place of employment.</p>	

Current Award	Proposed Order	Comments
<p>39.4 Casual employees make-up pay shall be based on the number of hours worked per week over the last month, with present employer, or if less than one month the average for the time worked. The amount to be paid as the normal weekly rate of pay only (i.e. time and one-quarter).</p>	<p>37.4 Casual employees make-up pay shall be based on the number of hours worked per week over the last month, with present employer, or if less than one month the average for the time worked. The amount to be paid as the normal weekly rate of pay only (i.e. time and one-quarter).</p>	
<p>40. AMENITIES</p>	<p>[deleted]</p>	<p>Not allowable</p>
<p>40.1 An employer shall provide a separate dressing room each for male and female employees, adequately lighted and ventilated with suitable floor coverings and floor space to be sufficiently roomy to accommodate all employees likely to use it at the one time; a table and adequate seating accommodation for staff to partake of meals, and lounge or settee and steel or vermin-proof lockers; adjacent thereto wash basins and showers with hot and cold water and toilets for staff use.</p>		
<p>40.2 An employer who is unable to provide the facilities herein required for a hotel built before 1 January 1968 may make application to a Board of Reference for exemption from this clause. The Board of Reference may grant such an exemption on such terms and conditions as to suitable alternative accommodation as it deems fit, provided that any exemption granted shall not continue after any substantial building alterations are made to the hotel on or after 1 January 1968.</p>		
<p>40.3 The provisions of this clause shall not apply to wine saloons.</p>		
<p>40.4 The provisions of this clause shall not apply in the South-Eastern Division of Queensland.</p>		
<p>41. CLOTHING, EQUIPMENT AND TOOLS</p>	<p>[see clause 23]</p>	<p>Item 49(8)(c)</p>
<p>41.1 Where the employer requires any special clothing such as coats, dresses, caps, aprons, cuffs and any other articles of clothing to be worn by the employee they shall be purchased and laundered at the employer's expense. By agreement the employee may be required to wash and iron the special clothing and an agreed sum of money shall be paid to the employee each week by the employer provided that in the event of dispute the amount shall be determined by the Board of Reference.</p>		

Current Award	Proposed Order	Comments
<p>41.2 For the purposes of this clause black and white attire (not being dinner suit or evening dress), shoes, hose and/or socks shall not be regarded as special clothing.</p>		
<p>41.3 Where it is necessary that waterproof or other protective clothing such as waterproof boots, aprons, or gloves be worn by an employee, such clothing shall be supplied without cost to the employee and shall remain the property of the employer. Provided that in the event of dispute, the necessity for the provision of protective clothing shall be determined by the Board of Reference.</p>		
<p>41.4 An employee on commencing employment shall sign a receipt for item/s of uniform and property. Such receipt shall list the item/s of uniform and property and value of same. Upon ceasing employment if the employee does not return item/s of uniform and property in accordance with the receipt the employer shall be entitled to deduct the value as stated on the receipt from the employee's wages</p>		
<p>41.4.1 Records of receipt shall be available for inspection by an official of the union. In the case of genuine wear and tear, damage, loss, theft that is not the employee's fault this provision shall not apply.</p>		
<p>41.4.2 Any disagreement concerning the value of item/s of uniform and property and any other aspect of this subclause shall be determined by a Board of Reference.</p>		
<p>41.5 All aprons, towels, tools, ropes, brushes, knives, choppers, implements, utensils and materials shall be supplied by the employer without cost to the employee.</p>		
<p>42. OCCUPATIONAL HEALTH AND SAFETY</p> <p>Each employer shall provide a first aid kit for the use of employees. Where State legislation requires specific first aid kits and/or facilities such as first aid rooms and the use thereof, then the employer shall comply with such legislation.</p>	[deleted]	Not allowable

Current Award	Proposed Order	Comments
<p>PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS</p> <p>43. TIME AND WAGES BOOK SHEETS</p>	[deleted]	Item 49(8)(c)
<p>43.1 Time and wages book or sheet shall be provided and kept by each employer. Each employee shall on commencing work each day enter his/her starting time; and on finishing work each day enter his/her finishing time and shall place completed time and wages book or sheets in a place designated by the employer.</p>		
<p>43.2 The employer shall keep such time and wages book or sheets available at all reasonable times and in a convenient place to which the employee shall have access for the purpose of making such entries. Such book or sheets may be inspected by the officials of the Australian Liquor Hospitality and Miscellaneous Workers Union at all reasonable hours.</p>		
<p>43.3 The employer shall keep a record of the time worked and the amount of wages and overtime paid each week, together with the date of payment. The employee shall each pay day be given details of his/her gross pay, taxation deductions and net pay.</p>		
<p>43.4 On the time and wages book or sheets that the employee completes he/she must enter his/her name, and age (if under 21 years). On the same time record the employer must enter the employee's work classification, whether permanent, full-time, part-time or casual as well as the rate per week and hourly rate of pay. Any alteration made to the employee's time record must be initialled by the employee concerned and employer representative.</p>		
<p>43.5 When broken or ordinary shifts are worked the employee shall enter in the time and wages book or sheets the time he or she goes off for each meal or break and the time of restarting work after each meal or break and the finishing time.</p>		
<p>43.6 Time and wages book or sheets must be kept at the place of employment for at least six years.</p>		

Current Award	Proposed Order	Comments
<p>43.7 Notwithstanding the other provisions in this clause, employers respondent to the award may provide electronic or mechanical time recording systems to be installed at convenient locations for employees to record their starting and finishing times each day.</p>		
<p>44. POSTING OF AWARD</p> <p>This award shall be exhibited by each employer on his/her premises in a place accessible to all employees.</p>	<p>38. POSTING OF AWARD</p> <p>This award shall be exhibited by each employer on his/her premises in a place accessible to all employees.</p>	
<p>45. PREFERENCE</p>	<p>[deleted]</p>	<p>Not allowable s.94</p>
<p>45.1 Preference shall be given to all members of the union who apply for employment under this award, and retention in employment under this award in the event of retrenchment. Such preference shall be given in the following manner:</p>		
<p>45.1.1 Where a member of the union applies for employment and is willing and able to perform work under this award in respect of which work the employer intends to engage a new employee, the employer shall engage such member of the union.</p>		
<p>45.1.2 Where the employer is aware that a member of the union is willing and able to continue to perform work under this award in respect of which work the employer intends to reduce the number of his/her existing employees by retrenchment, the employer shall retain in employment such member of the union in preference to persons who are not members of the union. Such preference shall be given subject to the following conditions:</p> <p style="padding-left: 40px;">(a) Nothing in this clause shall require an employer to engage or retain in employment any particular person who is, in the opinion of the employer, not able to perform the work efficiently.</p>		

Current Award	Proposed Order	Comments
(b) Nothing in this clause shall affect the right which an employer may have to dismiss summarily for misconduct or neglect of duty.		
46. STOP WORK MEETINGS	[see clause 39]	Item 49(8)(c)
46.1 One official stop-work meeting per year shall be allowed without loss of ordinary pay provided the conditions are observed as follows:		
46.1.1 At least fourteen days' notice of such meeting is given to each employer.		
46.1.2 The period of the meeting shall be three hours as a maximum, the employees returning to duty by noon.		
46.1.3 Payment to be made for the period that the employee was rostered for duty.		
46.1.4 Such stop-work meeting to be held on weekdays, other than Thursday or Friday.		
46.1.5 Payment of wages shall be made only upon the employer being in receipt of satisfactory evidence of the employees attendance at the meeting.		
<p>47. UNION OFFICIALS</p> <p>The secretary and accredited officials of the union shall have the right to enter the premises of an employer respondent at a time reasonably convenient to the employer for the purposes of interviewing members but such officials shall obtain the permission of the employer before entering either the cellar or the back of the house. Provided that the employer shall not unreasonably refuse the entry of a union official to the back of the house or cellar.</p>	[deleted]	Not allowable, but see Div 11A of Part IX of WR Act

Current Award	Proposed Order	Comments

39. LEAVE FOR CONSULTATION MEETINGS

Each employer must allow his/her employees to attend meetings to discuss industrial matters without loss of ordinary pay provided the following conditions are observed:

- 39.1** At least fourteen days' notice of such meeting is given to the employer.
- 39.2** The period of the meeting is no greater than three hours, and employees returning to duty by noon.
- 39.3** The employer is only obliged to pay wages for the period that the employee was rostered for duty.
- 39.4** Such consultation meetings are to be held on weekdays, other than Thursday or Friday.
- 39.5** The employer is only obliged to pay wages for the period of the meeting if the employer is in receipt of satisfactory evidence of the employee's attendance at the meeting.
- 39.6** The employer is not obliged to pay wages for more than one such meeting in any calendar year.

40. INDEX OF FACILITATIVE PROVISIONS

Item 49(8)(c)

40.1 A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise or workplace concerned.

Current Award

Proposed Order

Comments

	<p>40.2 Facilitative provisions in this award are contained in the following clauses:</p> <p style="text-align: center;"><u>Clause title</u> <u>Clause number</u></p> <p>Part-time employees - hours of work 15.3 Penalty rates - payment for public holidays 19.2.1 Payment of wages - time of payment 21.1 Payment of wages - method of payment 21.2 Payment of wages - fortnightly pay 21.2 Option for annualised salary 22 Clothing 23.3.4 Hours of work - method of working prescribed hours 26 Overtime - time off in lieu of payment for overtime 28.7 Rosters - alteration 29 Annual leave - time of taking 30.3 Parental leave - variation of period 32.6 Public holidays - coinciding with RDO's 34.6</p>	
APPENDIX A	APPENDIX A	
APPENDIX B	[deleted]	Item 49(8)(d)

Appearances:

R. Hamilton with *D. Harris* and *R. Mulcahy* for the Australian Hotels Association and the Australian Chamber of Commerce and Industry (intervening).

W. Hinkley of Counsel with *N. Swancott* and *B. O'Neil* for the Australian Liquor, Hospitality and Miscellaneous Workers Union.

E.R. Cole with *B. Leahy* and *P. Drever* for the Minister of Workplace Relations and Small Business for the Commonwealth (intervening) and for Her Majesty the Queen in the Right of the States of Queensland, Tasmania, Victoria, Western Australia, South Australia, and the Governments of the Australian Capital Territory and the Northern Territory (intervening).

S. Jones with *R. Campo* for the Australian Council of Trade Unions (intervening).

L. Wright Q.C. with *A. Hatcher* and *S. Bridgeford* for Her Majesty the Queen in the Right of the State of New South Wales (intervening).

F. Hayes for the National Pay Equity Coalition (intervening) and on behalf of the Women's Electoral Lobby (intervening) and the Australian Federation of Business and Professional Women (intervening).

Decision Summary

Award - allowable award matters - s.89A WR Act 1996 - test case liquor and accommodation industry - variations required to give effect to relevant statutory provisions - items 46-54 of Schedule 5 of WROLA Act 1996 - application made by AHA - various submissions made by LTU - consideration of LTU's submissions - nature of industry to be taken into account when considering proposals to vary existing award provisions - construction of s.89A - approach in *Commonwealth Bank of Australia Officers Award Case* adopted - Hospitality award to be varied pursuant to item 49(1) so that it deals only with allowable award matters - Hospitality award to be reviewed to determine whether it meets criteria in items 49(7) and (8) - separate draft order to be published - consideration of each clause of Hospitality award - proposed changes outlined - reasons for changes outlined - principles established by Full Bench to assist review process - award simplification principles - principles describe process to apply pursuant to items 49 and 50 of Schedule 5 of the WROLA Act - nine principles outlined (see below) - items 49(7) and (8) dealt with specifically - certain matters in Hospitality award more appropriately dealt with by agreement at workplace - *October 1995 Review* decision regarding majority clauses remain relevant - majority clause to be included in multiple industry awards where appropriate - agreements arising from facilitative provisions may be between employer and employee or employer and a majority of employees at workplace - Commission may prescribe safeguards to ensure facilitative provisions operate fairly - part-time work provisions in Hospitality award reviewed to ensure conformity with WR Act - statement in *October 1995 Review* decision in relation to plain English endorsed - question of whether particular award clause obsolete question of fact - in relation to updating, consideration to be given to whether award varied to incorporate safety net adjustments and relevant test case standards - Commission's model clause in relation to trainee standards and supported wage system to continue to apply - model anti-discrimination clause outlined - various attachments - principles - awards to be reviewed upon application under item 49 of WROLA Act after applicant has made reasonable attempts to reach agreement with other parties to the award about how the award should be varied and treatment of non allowable award matters - after 30 June 1998 awards to be reviewed when Commission satisfied award affected by item 50 of WROLA Act - awards to be varied so that they: act as a safety net of fair minimum wages and conditions of employment; are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; and encourage the making of agreements between employers and employees at the workplace or enterprise level - simplified awards are those which provide minimum working arrangements encompassing entitlements to pay and conditions and reasonable protections for both employees and employers in the accessing and granting of entitlements - simplified awards will have the following characteristics: will not contain non allowable matters or matters not incidental to allowable matters or not necessary for the effective operation of the award; provide minimum entitlements for employees in relation to allowable matters consistent with safety net character; provide rates of pay that operate as minimum rate; where appropriate include provisions enabling employment of regular part-time employees; not include provisions which set maximum or minimum hours of work for regular part-time employees; and include an anti-discrimination clause - where appropriate awards must be reviewed against items 49(7) and (8) of WROLA Act 1996 or items 51(6) and (7) - in considering whether to vary a paid rates award the Commission will take into account any subsequent Full Bench decisions which deal with the variation of paid rates awards - award simplification does not involve a general review of the level of award entitlements - no requirement awards contain provisions in respect of each of the allowable award matters - new Hospitality award to provide guidance to parties to other awards in award simplification process.

Application by Australian Hotels Association to vary the Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995

Giudice J

Melbourne

23 December 1997

Ross VP

McIntyre VP

MacBean SDP

McDonald D

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