

From: Alana Rafter <Alana.Rafter@ablawyers.com.au>
Sent: Thursday, December 14, 2023 1:45 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; Nick White <nwhite@gordonlegal.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; pgardner@gordonlegal.com.au; Penelope Parker <PParker@mauriceblackburn.com.au>; Besemerres, Clare <Clare.Besemerres@ags.gov.au>
Subject: Work value case - aged care industry - AM2020/99, AM2021/63 & AM2021/6 | Re: Further Authority

Dear Associate,

During closing submissions, Mr Ward made reference to the following authority: *Statement – Award Modernisation (AM2008/13–24) [2009] AIRCFB 50 at [76]*.

We **attach** a copy of that Statement, together with Aged Care Industry Exposure Draft (January 2009).

Yours faithfully,

Alana

Alana Rafter
Senior Associate
Australian Business Lawyers & Advisors

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From: Alana Rafter <Alana.Rafter@ablawyers.com.au>

Sent: 13/12/2023 11:04 AM

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Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; Nick White <nwhite@gordonlegal.com.au>;

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Subject: Work value case - aged care industry - AM2020/99, AM2021/63 & AM2021/6 | Re: Joint Employers' List and Bundle of Authorities

Dear Associate,

We refer to the above matter.

Please find **attached**, by way of filing, the Joint Employers' bundle of authorities.

The legal representatives for the active parties in these proceedings are included in this email.

Yours faithfully,

Alana

Alana Rafter

Senior Associate

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STATEMENT

Workplace Relations Act 1996

s.576E—Procedure for carrying out award modernisation process

Request from the Minister for Employment and Workplace Relations—28 March 2008

Award Modernisation

(AM2008/13–24)

JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT HARRISON
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER SMITH

MELBOURNE, 23 JANUARY 2009

INTRODUCTION

[1] This statement deals with award modernisation. It should be read in the context of the Commission’s earlier statements and decisions concerning award modernisation. We publish with the statement exposure drafts of 24 modern awards and two priority modern awards with draft amendments for Stage 2 of the award modernisation process. We also publish three draft schedules containing standard provisions dealing with the supported wage system for employees with a disability, national training wages and school-based apprentices respectively. A list of the exposure drafts and schedules is in Attachment A to this statement.

[2] We deal with matters in the following sections:

- issues of general importance
- consultations on the Stage 2 exposure drafts
- comments on each of the Stage 2 exposure drafts.

ISSUES OF GENERAL IMPORTANCE

[3] The Commission made 17 modern awards in the priority stage of award modernisation on 19 December 2008. Some matters were not finally dealt with in those awards and some matters have arisen since which require further consideration in conjunction with Stage 2 of the process.

Coverage, award flexibility and annual leave

[4] The award modernisation process was initiated by a request signed by the Minister for Employment and Workplace Relations (the Minister) on 28 March 2008 pursuant to s.576C(1) of the *Workplace Relations Act 1996* (the Act). The Minister varied the request on 16 June 2008 and 18 December 2008 pursuant to s.576C(4) of the Act. We shall refer to the request as amended as the consolidated request. The variations to the consolidated request made on 16 June 2008 were taken into account in the proceedings leading to the making of the priority modern awards and do not require any further comment at this stage. The variations to the consolidated request made on 18 December 2008, however, have not been considered in the award modernisation process so far. They have the potential to affect a number of terms of the priority modern awards which the Commission made on 19 December 2008. Those terms are, at least, the coverage clause, the award flexibility clause and the annual leave clause.

[5] Clause 2(e) of the consolidated request now requires that a modern award should be expressed “so as not to bind an employer who is bound by an enterprise award or a Notional Agreement Preserving a State Award (NAPSA) derived from a state enterprise award.” The requirement in relation to NAPSA derived from state enterprise awards was not part of the consolidated request prior to 18 December 2008 and was not therefore taken into account in the making of the priority modern awards.

[6] Clause 11AA of the consolidated request now provides that the Commission must ensure that a flexibility term in a modern award:

- requires the employer to ensure that any individual flexibility arrangement must result in the employee being better off overall;

... ..

- prohibits an individual flexibility arrangement agreed to by an employer and employee from requiring the approval or consent of another person, other than the consent of a parent or guardian where an employee is under 18.”

[7] These requirements obviously were not taken into account when the model flexibility clause was formulated.¹ Nor were they taken into account in the making of the priority modern awards.

[8] Clause 33 of the amended request provides that modern awards may require employees, or allow employees to be required, to take paid annual leave but only if the requirement is reasonable. The requirement for reasonableness was not part of cl.33 prior to the variations on 18 December 2008. Similarly, it was not taken into account in the making of the priority modern awards.

[9] We intend to deal with these variations to the consolidated request, and any others that might be relevant, in making the Stage 2 awards, provided it is practical to do so. We encourage interested parties to bring forward proposals and submissions as to how these new requirements should be reflected in the coverage, award flexibility and annual leave clauses. The Stage 2 exposure drafts do not attempt to take account of the 18 December variations.

[10] It is also necessary to consider the effect of the variations to the consolidated request on the priority modern awards made in December 2008. We would also welcome suggestions and submissions as to the procedure to be adopted in ensuring that the relevant provisions in those awards properly reflect the terms of the consolidated request. There is also the possibility, which we mention below, of considering all variations required in modern awards, for whatever reason, at the same time as transitional provisions are being considered.

Transitional provisions

[11] As indicated in its decision of 19 December 2008, the Commission decided to consider any transitional provisions at a later stage in the process. This course was adopted to permit parties affected by the modern awards to give proper consideration to the effect of the terms of the awards and to advance transitional proposals accordingly. It is our provisional view that the same approach should be adopted in relation to the Stage 2 modern awards. If that view is ultimately adopted there would be a further proceeding after June of this year to ensure that all modern awards include any necessary transitional provisions. This also is a matter on which views are sought as part of the Stage 2 consultations.

Other possible variations to modern awards

[12] We have already mentioned the need to review some terms of the modern awards as a result of the recent variation to the consolidated request. It may be necessary to vary modern awards for a number of other reasons prior to 1 January 2010. For example, minimum and other wage provisions in modern awards may require variation as a result of any alteration made by the Australian Fair Pay Commission (AFPC) in 2009. On current indications the AFPC is likely to issue a wage determination in early July. Should any application be made to amend modern awards following that determination the application should be dealt with prior to 1 January 2010, the date on which modern awards commence to operate. Modern awards may also require amendment following the passage of the Fair Work Bill. One possible approach to the matter is to provide that when transitional provisions are being dealt with in the second half of 2009 the Commission might also deal with any other variations required in modern awards whatever the source of the variation. Views on this matter also are sought during the Stage 2 consultations. We intend to deal with the matter in our decision on the making of the Stage 2 awards, to be published by 3 April 2009.

Draft schedules

[13] In making the priority awards the Commission indicated that modern awards would include schedules dealing with the supported wage system for employees with a disability, national training wages and school-based apprentice provisions. It is anticipated that these provisions will be of general application. Drafts of all three provisions are published with this statement. We invite comments on the drafts during the Stage 2 consultations. The supported wage system schedule and the school-based apprentices schedule do not require comment in this statement. There are, however, a number of issues relating to the national training wage schedule.

[14] The first issue is whether there should be one, common national training wage schedule for all relevant awards or whether there should be some differences on an industry basis. If there is to be one uniform schedule it would need to include all of the available training packages. If there were different schedules this would permit the inclusion of only the training packages relevant to the particular award and the exclusion of others and other

differences on an industry basis. At this stage we favour one, common national training wage schedule. The schedule would include the full range of available training packages and would be included in all modern awards in which relevant training arrangements are possible. The exposure draft is put forward on that basis and includes a number of training packages which have been approved since the *National Training Wage Award 2000*² was last varied. Nevertheless the final decision on these matters will be made in light of the material and arguments advanced during the consultations.

[15] The schedule, like the *National Training Wage Award 2000*, allocates each training package to skill level A, B or C for the purpose of determining the appropriate minimum wage. The draft provides that where a training package has not been allocated to a skill level the default level will be level B. We should also mention that the award provides for special school leaver rates of 25%, 33% and 50%. We have decided not to include these rates in the draft as it appears they have not been used. Like all of the exposure drafts, the draft schedule indicates a preliminary view only. Once the National Training Wage Schedule has been finalised it will be necessary to consider the affect upon trainee provisions which have already been included in modern awards and, in particular, whether those provisions should remain in the award.

CONSULTATIONS ON STAGE 2 EXPOSURE DRAFTS

[16] With this statement we publish exposure drafts of a further 24 modern awards and two priority modern awards with draft amendments. Written comments and other material in relation to the exposure drafts are to be lodged with the Commission by 13 February 2009. Comments can be lodged by post, fax or email. It would assist if comments could be directed to a specific clause in a particular draft where it is practicable to do so. All relevant material lodged with the Commission will be made available through the internet as soon as practicable.³ The Commission will sit in Sydney from 23 to 27 February 2009 inclusive for final consultations. The purpose of the consultations will be to permit discussion on matters arising from the material already filed but not to repeat that material. The dates and times of the consultations will be confirmed in a notice of listing.

[17] As we have already indicated, it is intended that the Stage 2 consultations both written and oral, will also deal with a number of matters of general significance identified earlier in this statement.

[18] We urge parties to meet the deadlines for the filing of material. While there will be occasions on which some latitude is appropriate they will be rare. The effectiveness of the consultation process is largely dependent on the timetable being met. We also wish to make it clear that we cannot guarantee that the Full Bench will have the opportunity to properly consider material which is not lodged in accordance with the timetable.

Piece work

[19] Clauses 43 to 45 of the consolidated request refer to piece workers and to the interaction between modern awards and the entitlements in the National Employment Standards (NES). A number of Stage 2 industries have piece workers. We ask interested parties to address the matters raised in cl.44 and 45 of the consolidated request during the consultations.

Rationalisation of allowances

[20] In a number of industries there are many different allowances in federal awards and NAPSAs, some of quite small amounts. It is often difficult to know the origin and purpose of the allowances and whether they are still relevant. In some cases the allowance will not be appropriate for inclusion in a safety net award because it is outmoded, is the result of enterprise bargaining or for some other reason.

[21] In some industries there is a strong case for rationalising allowances. The manufacturing and building and construction industries are examples. We encourage parties to give attention to the number, amount and purpose of allowances with a view to rationalising them and eliminating those that are no longer relevant.

COMMENTS ON STAGE 2 EXPOSURE DRAFTS

[22] For ease of reference we shall deal with the exposure drafts in their industry groupings.

Agriculture group

[23] We deal first with the agriculture group of industries. We should indicate that we have decided not to publish an exposure draft for the aquaculture or wine industries. We shall give further consideration to the aquaculture industry in Stage 4 and we intend to deal with the wine industry in Stage 3. We have also decided against a separate agribusiness clerical and administrative draft award—the relevant operations will be included in the award made in the financial services group. We have also decided not to publish a draft award dealing with services to agriculture. There is currently no such award and we have not been persuaded that there should be.

[24] We publish an exposure draft of the *Pastoral Industry Award 2010*. The Australian Workers' Union (AWU) submitted that we should make a wool industry award. Such an award could cover work as diverse as shearing and crutching sheep, the processing of fleeces into wool and the storage of wool fleeces for export. We have decided not to publish an exposure draft covering all of these industries. We consider the processing of wool fleeces for the purpose of making wool fibre to be a manufacturing activity covered by the *Textile, Clothing, Footwear and Associated Industries Award 2010*.⁴ Other wool activities continue to be covered by the award regulating the pastoral industry.

[25] We have decided to publish an exposure draft of a wool storage award along the lines of the agreement between the Agribusiness Employers' Federation and the National Union of Workers (NUW). The draft is entitled *Skin, Hide and Wool Stores Award 2010*.

[26] During the pre-drafting consultations an issue arose as to the appropriate award coverage for cotton ginning. Both the AWU and the National Farmers Federation (NFF) to some degree acknowledged that cotton ginning is not an activity which is suitable for regulation as part of the pastoral or horticultural industries. However, it was suggested that it may be suitable to regulate cotton ginning by a discrete part of a pastoral industry award.

[27] Cotton ginning is not the growing of crops or the raising of livestock. It is an industrial processing activity rather than an agricultural activity. Awards in the pastoral industry do not presently cover cotton ginning which is regulated by NAPSAs with customised classifications

and terms and conditions of employment including night and shiftwork provisions. These terms and conditions bear little resemblance to those in awards covering the pastoral industry. In our view, it may be more appropriate that the industry be regulated by a modern award of specific application or by the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Modern Award).⁵ We publish an exposure draft of the *Cotton Ginning Award 2010*. In doing so we do not exclude the possibility that the industry might be more appropriately covered by the Manufacturing Modern Award.

[28] We also publish exposure drafts of the *Horticulture Award 2010*, *Nursery Industry Award 2010* and the *Silviculture Industry Award 2010*.

[29] We note that major industry organisations encountered difficulties in addressing some complex and important issues concerning classifications, rates of pay and allowances relevant to the pastoral and horticulture exposure drafts. Many of these matters are likely to require significant attention during consultations on the exposure drafts. Rates of pay for shearing and crutching are in this category. The exposure draft for the pastoral industry covers wool harvesting, including piece work rates for shearing and crutching sheep and pressing wool, as well as rates of pay for shed hands. Where submissions were made concerning these issues they were brief or incomplete. The exposure draft includes the existing table of piece and other rates applicable to shearing shed operations. We provisionally note the possibility of adopting the AWU's proposal to introduce the 38-hour week for shearers. That proposal is to adjust the shearers' formula by reducing the number of sheep required to be shorn for the existing per hundred rate from 100 to 95.

[30] The draft awards for the pastoral industry and horticulture attempt to bring together a number of awards and NAPSAs containing an extremely diverse range of conditions. In due course, when the awards have been made, attention will need to be given to appropriate transitional provisions.

Building, metal and civil construction group

[31] There are four exposure drafts in this industry group:

- *Building and Construction Industry General On-site Award 2010*
- *Electrical, Electronic and Communications Contracting Industry Award 2010*
- *Plumbing and Fire Sprinklers Contracting Industry and Occupational Award 2010*
- *Joinery and Building Trades Award 2010*

[32] The first exposure draft is the *Building and Construction Industry General On-site Award 2010* (Building and Construction Modern Award). This draft encompasses the areas covered by the *National Building and Construction Industry Award 2000* (NBCI Award)⁶, the *Australian Workers' Union Construction and Maintenance Award 2002* (AWU Award),⁷ the *National Metal and Engineering On-site Construction Industry Award 2002*⁸ and associated awards and NAPSAs. The exposure draft also covers other activities currently subject to separate award regulation—for example, landscaping, joinery work, mobile crane work and geomembrane and geotextile installation where undertaken in the building and construction industry.

[33] We received an amended draft award from the Construction, Forestry, Mining and Energy Union (CFMEU) on 19 January 2009, in which amendments were made to its proposed scope clause, a new mobile crane table of rates was added, new clauses dealing with

apprentices, including school-based apprentices, and trainees were proposed and some transitional arrangements were removed. We have decided to publish the exposure draft in the terms drafted by us prior to the receipt of the CFMEU's amended draft, notwithstanding the fact that the amendments proposed by the CFMEU warrant consideration. We do so on the basis that we will consider the new provisions now proposed during the post-exposure draft consultations, together with any other views expressed by industry participants. The modification of the apprentices and training arrangements is significant, as are the new mobile crane wages proposed and the scope provision. However, given the very late receipt of the third version of the CFMEU draft award and the significant changes involved, we think it necessary to hear its explanation of the changes advanced, together with the views of others during the next part of the Stage 2 consultation process. That process would be assisted if the CFMEU could file its explanation prior to the consultations in order that other parties have an opportunity to consider the basis for the CFMEU approach prior to putting their views during the consultations.

[34] We incorporated the mobile crane hire industry into the exposure draft published, utilising classifications drawn from the NBCI Award and the AWU Award. We did consider the publication of an exposure draft for the mobile crane industry to operate beyond the building and construction industry based on the *Mobile Crane Hiring Award 2002* (Mobile Crane Award),⁹ including consideration of the possibility of a broader award for an industry based on the provision of equipment and labour for hire beyond the building and construction industry. We decided, however, to defer consideration of such an award on the basis that we received little input from interested parties on the mobile crane hire industry. The most substantial contribution, a two page submission by the Crane Industry Council of Australia (CICA), suggested a need to rewrite the classification system and review the current severance pay provision.

[35] On 16 January, we received advice from the CFMEU about an agreement between it, the CICA and the Australian Industry Group (AiGroup) that a separate mobile crane hire award should be made. Similar advice was received from CICA on 19 January. A proposed joint draft award was provided on 20 January 2009. We have decided to proceed with the publication of the exposure drafts prepared by us but to consider the joint CFMEU, CICA and the AiGroup draft during the Stage 2 consultations. We invite them, and any other interested parties, to address us on the rationale for and content of the proposed separate mobile crane hire award. In doing so they should address the relationship with mobile crane classifications imported from the AWU Award and the NBCI Award into our exposure draft covering the general building and construction industry. They should also address the relationship between the classifications in their proposed separate mobile crane award and the mobile crane classifications proposed for the general building and construction award by the CFMEU in its third version of its draft. Further, we invite input in relation to the appropriate minimum wages, given that current wage rates in the Mobile Crane Award, when updated for AFPC increases, appear to be in advance of those found in the AWU Award.

[36] We have also published separate exposure drafts for the electrical contracting industry and plumbing industry and occupation. The latter draft includes the fire sprinkler industry. The draft awards are the *Electrical, Electronic and Communications Contracting Industry Award 2010* (Electrical Modern Award) and the *Plumbing and Fire Sprinklers Contracting Industry and Occupational Award 2010* (Plumbing and Fire Sprinklers Modern Award).

[37] Without deciding the issues, we have not included the asphalt, bitumen and pre-mixed concrete industries subject to further consideration in respect of possible separate awards or

integration into the building and construction industry, cement and concrete products or quarrying awards.

[38] We note that, during the consultation stage, the industry participants did not fully address the possible content of exposure drafts, preferring to await some indication from us as to the number and proposed scope of operation of exposure drafts for the industry. As a consequence, the exposure drafts published are very much at a preliminary stage and will no doubt benefit from a more detailed input from the industry participants during the consultations. Particular issues that warrant further input from industry participants are identified below, although further input into the terms of the exposure drafts generally would be desirable.

[39] We have retained daily hire as an optional employment type, together with hourly rates loaded with the follow the job component of the minimum wage rate and certain additional payments in the exposure drafts for the Building and Construction Modern Award and the Plumbing and Fire Sprinklers Modern Award. We have drawn on the CFMEU draft for this purpose. However, we invite the parties to address us on the continuing role of the daily hire mode of employment, and associated loaded rates, in the context of a contemporary safety net modern award.

[40] We have removed, from each award, restrictions on the maximum duration of casual employment, replacing them with a casual conversion clause. In respect of the Plumbing and Fire Sprinklers Modern Award, we have also included provision for part-time employment.

[41] The redundancy provisions in the exposure drafts also require further detailed input in light of the current award provisions. A pre-2004 redundancy scale applying to small business employers appears in some awards and NAPSAs in the industry. Most, but not all, awards contain the provision peculiar to the building and construction industry, which defines redundancy more broadly than the definition arising from Commission test cases and reflected in the NES. The provision applies a slightly different redundancy benefit scale in respect of the first four years of service but does not reflect the current standard for larger employers arising from the 2004 Full Bench decision.¹⁰ The building industry provision also permits an employer to offset its obligations under the redundancy provision by making contributions to a redundancy pay scheme. Our exposure drafts attempt to apply the NES, maintain pre-2004 small business provisions and retain the option of offsetting obligations by contributions to funds. Further input from interested parties is desirable.

[42] In drafting the Building and Construction Modern Award we have rationalised a range of State-based differences in rates for apprentices. The allowances provisions generally reflect the current NBCI Award provisions. It may be observed, however, that the allowances provisions are cumbersome and highly prescriptive, as illustrated by the tool allowance provision. We note that the CFMEU and Master Builders Australia (MBA) are open to a rationalisation of allowance provisions.¹¹ We invite them, and other interested parties, to explore a rationalisation of the allowance provisions in the exposure draft, including the identification of any unnecessary or outdated allowances, as a matter of urgency and to deal with the issue in the consultations.

[43] We have included in the exposure draft, an MBA formulation of travel and distant work provisions. We have included two inclement weather provisions—drawn from the NBCI Award and AWU Award. In our provisional view, inclement weather provisions are a modern award matter. However, we would be assisted by an attempt to simplify the provision,

removing unnecessary prescription with a view to a standard provision which could be applied across all sectors of the industry.

[44] Finally, in relation to the Building and Construction Modern Award exposure draft, we have included in the draft some separate provisions for the civil construction sectors. Those provisions relate to allowances and shiftwork. In the latter respect, for the purposes of the exposure draft, we have simply replicated the NBCI Award and AWU Award prescriptions for shiftwork. We invite further input from interested parties in the post-exposure draft consultations, directed to simplification of the provisions and, to the greatest extent possible, some degree of commonality of shift provisions.

[45] Turning now to the draft Electrical Modern Award we have adopted the draft jointly proposed by the National Electrical and Communications Association (NECA) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), although with some modification. The major modification involves the expression of wages and allowances as separate amounts, rather than in a rolled-up rate, as discussed below. Otherwise, the modifications involve some editing of the NECA and CEPU draft to remove unnecessary detail and provisions which involve no obligation or entitlement.

[46] With respect to the major modification, in our view modern awards should separately identify properly fixed minimum rates and any additional payments and allowances and describe the basis of their application. We have recast the NECA and CEPU draft to this effect, using Victorian provisions in the *National Electrical, Electronic and Communications Contracting Industry Award 1998* (Electrical Contractors Award).¹² In doing so we have omitted the special payment found in Tables A, E, I and M of the Electrical Contractors Award and the service increments found in cl.18.3.1(g) of the award.

[47] We have omitted the special rates on the basis that, as we understand it, they constitute the residual amounts arising from the conversion of paid rates to minimum rates in June 1998.¹³ On 20 October 1998, the *Paid Rates Review* Full Bench established principles for the conversion of awards which do not contain properly fixed minimum rates.¹⁴ The principles required the establishment of proper minimum rates and set out a process for the introduction of those rates. The principles stated that where the rates do not equate they will require conversion in accordance with the principles that:

“5. Any residual component above the identified minimum rate, including where relevant incremental payments, should be separately identified and not subject to future increases.

... ..

7. Any future increases in rates in the award will only be applied to the minimum rates component and will be absorbed against any residual component; that is, the residual component will be reduced by the amount of the increase in the minimum rates component.

8. Increments will only be retained where they have been included in the award pursuant to the relevant work value principle or where it can be established that the increments were inserted by the Commission on grounds of structural efficiency and work value.”¹⁵

[48] Subject to further input from relevant parties, it is our view that the special payments in the award should have been absorbed against safety net increases since 1998 and the service increments should have been similarly absorbed unless included on work value or structural efficiency grounds. For this reason, we think that those amounts should not be included in the modern award. In addition, we have not included the attendance allowance in the current Electrical Contractors Award. Subject to further explanation by the parties, we do not see a role for an additional payment for attendance at work within a minimum safety net award.

[49] We note that the NECA and the CEPU draft bases the wages provision on the *Electrical, Electronic and Communications Contracting Industry (State) Award (NSW)*.¹⁶ NECA and CEPU need to address us on the appropriateness of the level of the minimum classification rates and the level of and rationale for the inclusion in a safety net award of the various allowances in the total weekly rates they propose. As noted above, whatever wage rates and allowances are included in the final award should be separately identified.

[50] The wage-related allowances in the exposure draft have been calculated by adjusting the Victorian rates in the Electrical Contractors Award, last adjusted in 2005, increasing them by the percentage increase in the trade rate since the last adjustment (\$54.90/\$578.20) and then converting the rate to a percentage of the current trades rate (\$637.60). Expense-based allowances reflect current Victorian rates in the Electrical Contractors Award and will need updating.

[51] In their joint draft, the NECA and the CEPU noted that some issues are the subject of ongoing discussions. Generally, we have not included such matters in the exposure draft, subject to clarification by the NECA and the CEPU. In relation to one such issue, payment to apprentices, we have included the percentage of the trades rate for apprentices in Victoria reflected in the Electrical Contractors Award in the exposure draft, subject to further consultation.

[52] The exposure draft for the Plumbing and Fire Sprinklers Award has both an industry coverage, with respect to plumbing and fire sprinkler contractors and an occupational coverage, with respect to plumbing and fire sprinkler work. Given the common skill-based classification structure, subject to recognition of different plumbing and sprinkler fitting skills, and a general commonality of current award conditions, we have included sprinkler pipe-fitting in the draft, although the draft provides for a range of different conditions for the fire sprinkler sector.

[53] The classification structure we have included is a combination of the current “Award restructuring—new classification structure” appendices to the *Plumbing Trades (Southern States) Construction Award, 1999*¹⁷ and the *Sprinkler Pipe Fitters’ Award 1998*.¹⁸ Each of the appendices was expressed to operate by agreement for a period of 12 months, after which time it was to be inserted in the award. The appendices appear to have been approved and inserted in the awards in 1997.¹⁹

[54] The exposure draft of *Joinery and Building Trades Award 2010* (Joinery Modern Award) is largely based on the current *National Joinery and Building Trades Products Award 2002* (National Joinery Award),²⁰ as it applies in the off-site sector. As with each of the exposure drafts published for this industry group, it is desirable that during the consultations

consideration be given to rationalising the allowances in the exposure draft published, in particular special rates.

[55] The CFMEU filed a draft Off-site Construction Industries Award on 31 October 2008. The AiGroup proposed that the scope of any such award be limited to avoid intrusion into the manufacturing industry. The CFMEU and AiGroup reached an in-principle agreement directed at resolving this tension, although the practical effect of the agreement is difficult to ascertain. The CFMEU lodged an amended draft award on 20 January 2009. The amended award apparently did not resolve the AiGroup's concerns. Nor was the amended draft acceded to by the MBA.

[56] We accept the need to consider a modern award or awards covering other work within the awards in the current building, metal and civil construction group, as they apply beyond the building and construction industry. We are conscious, however, of the need to avoid such an award or awards intruding into manufacturing activity, which would be more properly regulated by the Manufacturing Modern Award. The exposure draft of that award, as revised in Stage 2, incorporates elements of the draft off-site award initially proposed by the CFMEU, specifically clay articles, glazing and gypsum and plasterboard manufacturing. As noted above, at this stage, the cement and concrete products industry will be considered in Stage 3.

[57] The terms and scope of a modern award applying to building trades and activities off-site was not subject to detailed discussion in our consultations and the CFMEU's amended draft came too late to allow broader input into the issues raised. In the circumstances we have decided to publish an exposure draft for off-site building work largely based on the current National Joinery Award as it applies in the off-site sector. That exposure draft is entitled Joinery Modern Award. We shall give further consideration to the scope of such an award, or any additional awards to cover other off-site work, during the consultations. The CFMEU will have the opportunity to elaborate on its proposal and other parties will be able to provide their views in the next part of the Stage 2 consultation process.

Cleaning services

[58] We publish an exposure draft of a *Cleaning Services Industry Award 2010*. The submissions made and material presented during the pre-drafting consultation indicate a large degree of agreement between the industry associations, the Building Services Contractors Association of Australia (BSCAA) and the Australian Cleaning Contractors Association (ACCA), and the Liquor, Hospitality and Miscellaneous Union (LHMU) concerning the contents of an award to cover the contract cleaning industry. While some NAPSAs cover directly employed cleaners the exposure draft covers only employers and employees engaged in the contract cleaning industry.

[59] The contract cleaning industry is characterised by high levels of part-time employment. Almost 50% of employees are engaged on a part-time basis often working shifts which may be of very short duration. It is also an industry where there are frequent changes of contract and where commonly employees cease employment with the outgoing contractor and become employees of the incoming contractor. It is an industry in which employees are highly reliant on the award and competition for contracts is primarily based on price.²¹

[60] Awards and NAPSAs in the industry currently provide for part-time employees to be rostered to work up to the equivalent of full-time hours without payment of overtime. For the most part this flexibility attracts the payment of a loading equivalent to 15% of the

classification rate. Given the nature of the industry and subject to appropriate safeguards this arrangement can be included in a modern award and we have put it in the exposure draft. We have also provisionally decided that there is merit in the proposal by the industry parties to provide for minimum engagement periods based on the size of the job and this is also reflected in the exposure draft.

[61] The major parties proposed that the award make provision for an outgoing contractor to be exempt from making severance payments provided for by the NES under certain circumstances. We are of the view that such a provision would be contrary to the terms of the consolidated request, in particular cl.30, and we have therefore not included it in the exposure draft.

[62] There are a large number of allowances in the various awards and NAPSAs covering the industry. A number of these allowances are State or location specific and it is not always clear that they are appropriate for inclusion in a safety net award. Many of these allowances have not been included in the draft.

Financial services group

[63] This industry sector is a major part of the Australian economy and an employer of over 400,000 people. It covers a range of financial institutions, including banks, building societies, credit unions, insurance companies, trustee companies and related service businesses such as trading, debt recovery, financial consulting, and broking institutions.

[64] Award coverage of the sector is long standing. The major banks, merchant banks and several building societies are currently covered by federal enterprise awards. Most other parts of the industry are covered by industry awards and NAPSAs. Award covered employees are predominantly engaged in white collar clerical related roles with particular finance industry knowledge and skills. There are widespread formal and informal overaward arrangements.

[65] The Finance Sector Union, the major banks and some other employers supported the making of a single award for the sector. Other employers and the Australian Services Union supported the continuation of awards which had been established for parts of the sector.

[66] We have prepared an exposure draft of a single award covering the entirety of the industry entitled the *Banking, Finance and Insurance Industry Award 2010* (Banking Modern Award). We consider that there are advantages in a uniform safety net provided that it is simple to understand and apply and does not lead to significant changes to current terms and conditions. The draft covers all parts of the industry including those currently covered by separate instruments such as the health insurance industry and woolbroking.

[67] The terms of the exposure draft reflect, in large part, the current terms of federal awards covering parts of the industry such as the *Insurance Industry Award 1998*²² and the *Credit Union Award 1998* (Credit Union Award).²³ The draft is intended to ensure that there will be little change for those remunerated in excess of the award and those who currently receive limited overaward benefits. This should minimise disadvantage to employees and additional cost to employers.

[68] The classification structure reflects the six level structures applying in many awards and includes a partial exemption from hours, overtime and allowances for employees paid in

excess of \$44,242. Although the rate is higher, this reflects many of the partial exemption provisions in finance industry awards and particularly the terms of the Credit Union Award.

Graphic arts group

[69] On the basis of materials currently before us we are not persuaded that it would be appropriate to incorporate the graphics arts and printing industries into the Manufacturing Modern Award. We publish an exposure draft of a *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010*. The exposure draft, if made an award, will replace two federal awards in the graphic arts industry and nine federal awards and 20 NAPSAs in the printing industry. The draft reflects a significant degree of agreement between the major interested parties.

[70] The coverage clause reflects the current *Graphic Arts—General—Award 2000* (Graphic Arts Award)²⁴ circumstance of both industry and occupational coverage. We are not entirely persuaded that this should pertain in the future and invite further submissions on the issue. While plastics manufacturing is included in the coverage clause, reflecting current circumstances, it is restricted by reference to the printing element involved in manufacturing. We are not currently persuaded that references in current classification definitions to aspects of web design are sufficient for us to include provision for web development/design in the coverage clause.

[71] The exposure draft contains a casual employment clause which departs from the current circumstances of conversion from casual to full or part-time employment provided for in the Graphic Arts Award. The clause in the exposure draft is largely reflective of the casual conversion clause in the Manufacturing Modern Award.

[72] The classification structure in the draft is identical in substance to that incorporated into the Graphic Arts Award in 2005. The implementation of an eight level structure in 2005 gave rise to a requirement to include award terms enabling employers to absorb increases relating to the transition to the new structure and to argue incapacity to pay. We have not included those provisions in the current exposure draft on the basis that the transition was close to complete. However, an additional timeframe from 1 January 2010 to 30 June 2010 has been included to reclassify employees not currently on the eight level classification structure. Any other issues relating to the implementation of the eight level classification structure should be raised during the consultations.

[73] The exposure draft covers employees previously covered by the *Commercial and Industrial Artists Award 2000*.²⁵ We have had some advice from union and employer organisations, in response to an inquiry made subsequent to the formal consultations, that the skill descriptors in the classification structure in the Graphic Arts Award, which we have included in the draft, are sufficient to cover the skill requirements of those employees. Any related issues should be dealt with during the consultations.

[74] A leading hand allowance currently exists in certain awards. The allowance has been included in the exposure draft but its application will be limited. The allowance will continue for those employees who currently receive it until the reclassification of those employees to a level in the classification structure containing commensurate supervisory duties.

Health and welfare services (excluding social and community services)

[75] We have decided to publish four exposure drafts in this industry group. They cover; aged care, nursing, professional and support services, and doctors. The Health Services Union (HSU) lodged a further submission at a very late stage. This submission will be taken into account during the consultations.

[76] The exposure draft of the *Aged Care Industry Award 2010* not only covers aged care provided in institutions but also extends to services provided in the home by persons who are covered by the award. This approach may require further consideration. There are a myriad of services for the elderly which are conducted by various organisations including private providers and local governments. Further, aged care activities may be an element in the provision of disability services. This will be examined further in dealing with social and community services in Stage 4.

[77] The exposure draft of the *Nurses Occupational Industry Award 2010* is, as its name suggests, cast as an occupational award. Nurses are the single biggest occupational group in health and welfare services²⁶ and the material advanced suggests at this stage that an occupational award is warranted. The award generally applies to nurses wherever employed although nurses employed in secondary schools have been excluded.

[78] The exposure draft of the *Health Professionals and Support Services Industry and Occupational Award 2010* is a generic exposure draft to cover professional and technical classifications together with clerical and administrative classifications. We have sought, in the salary structure and level of salaries, to accommodate all health professionals (except doctors and nurses) employed in both the health industry and industry generally. At this stage we have not attempted to attach particular professions or skills to any particular pay point. We invite the parties to examine this and provide advice during the consultations. We have attached as Schedule B to the award a list of common occupation names which should also be considered.

[79] The draft awards covering nurses and health professionals have a common entry rate for a three year degree. We have struck the minimum wage for both classifications at \$697.00 per week.

[80] We have not included qualifications allowances in the draft awards for nurses or health professionals. Our provisional view is that the classification structure should deal with qualifications in two ways. The first is the entry rate, which the drafts provide for, and the second is the level at which people are classified. The traditional work value notion of skills held and called upon to be used remains valid. We do not see it as appropriate for persons performing the same work to be paid differently based upon additional non-mandatory qualifications. Ordinarily, further study would enhance opportunities for promotion within the structure. Mandatory qualifications should be reflected in the classification structure.

[81] In relation to both nursing and health professionals the exposure drafts cover employers whether they are in the health industry or not. Employers who provide nursing or other professional health services under contract would be covered in relation to their employees in the relevant classifications.

[82] Finally there is an exposure draft of a *Medical Practitioners Occupational Award 2010*. Salaries are drawn mainly from those prepared by the Australian Salaried Medical Officers Federation as no other party dealt with medical practitioners.

Information and communications technology group

[83] These industries cover telecommunications operations and servicing, market research, data processing, the operation of call centres and the servicing of business equipment and computers. Because of the disparate nature of the various types of businesses and the work of employees we consider that the scope for aggregation of awards within these industries is limited.

[84] Although some awards are of longstanding, award coverage of the sector is generally of relatively recent origin. A number of federal awards have been developed with a large measure of agreement in recent years.

[85] The servicing of business equipment has undertaken many changes in the computer age. We consider that the establishment of an award for electrical contractors with a broad definition of the types of business covered and the work of their employees, combined with the vocational reach of the Manufacturing Modern Award into maintenance activities, probably makes it unnecessary that there be an additional award covering the servicing of business equipment. As already mentioned, an exposure draft of an Electrical Modern Award is published with this statement. A key question to be explored in the consultations is whether that award would be an appropriate safety net for employees engaged in servicing business equipment.

[86] We publish an exposure draft of a *Market and Social Research Industry Award 2010*. The market research industry was described as one which involves much more than clerical and administrative work. A modern award was proposed with a large measure of agreement between market research employers and the NUW. The draft largely reflects standard provisions, existing award provisions and the helpful guidance of the parties.

[87] We publish an exposure draft of a *Telecommunications Services Industry Award 2010* (Telecommunications Modern Award). The telecommunications services industry covers telecommunications service carriers and related services. Major operators are covered by enterprise awards, but other operators are covered by an industry award of relatively recent origin. The scope of the award revolves around the operation, installation and servicing of telecommunications equipment including any call centre operated by a telecommunications operator. It does not cover manufacturers of telecommunication equipment even though they may operate telecommunications services or install and service the equipment they manufacture. Further, it does not cover employers who install and service equipment and lines but do not operate that equipment or lines. The draft award reflects standard provisions, existing award terms and the significant amount of agreement of the parties.

[88] The draft award covers all current award-covered employees apart from professional employees. The parties to the current award agree that the nature of professional employment in the sector makes it more appropriate that there be a separate award for professional employees. The employers proposed an information technology and telecommunications industry award confined to professional employees engaged in those industries. The Association of Professional Engineers, Scientists and Managers, Australia proposed an occupational award covering information technology and telecommunications professionals.

[89] We have decided to defer the consideration of awards covering such employees until Stage 3 of the award modernisation process. The nature of awards covering professional

employees generally will be considered in Stage 3 and the alternative approaches can be considered in that broader context.

[90] Parties subject to the *Contract Call Centre Industry Award 2003* (Contract Call Centre Award)²⁷ proposed the establishment of a modern award which largely reflects the scope and content of that award. Call centres are operated by a range of employers in different industries and on a contract basis by specialist call centre service providers. Some employers operate a call centre with respect to their own operations and undertake contract work for other clients. It is a growing industry and subject to intense domestic and international competition.

[91] We have included call centre operations within some draft industry awards where appropriate. Those draft awards include the drafts for the Banking Modern Award and the Telecommunications Modern Award. Currently direct, contract and hybrid call centres are covered by common rule clerical awards and NAPSAs and in some cases by the federal Contract Call Centre Award.

[92] A range of submissions were put to us as to the future coverage of call centres. We consider that it would be desirable that industry awards cover call centres where appropriate and where not covered, one safety net award apply uniformly to all other contract and direct call centres. Common rule clerical NAPSAs coverage was described as appropriate by operators who made submissions to us. A uniform safety net which also consistently applies appropriate flexibilities to this growing industry would ensure that all competition is on an even base and that international competitiveness can be maximised.

[93] We have decided to amend the *Clerks—Private Sector Award 2010* (Clerks Modern Award)²⁸ on an exposure draft basis, to cater for all call centres not covered by an industry award. The changes reflect flexibilities and additional classifications contained in the contract call centre award. The proposed amendments are marked up in the draft of the Clerks Modern Award we publish with this statement.

Manufacturing group

[94] The exposure draft for the Manufacturing group is the Manufacturing Modern Award, which was made in Stage 1, with the coverage clause amended to add the industries in the Stage 2 manufacturing group. The coverage clause has also been altered to exclude employees of electrical contractors from the coverage of the award as a corollary of the publication of the Electrical Modern Award exposure draft. The redundancy clause of the Manufacturing Modern Award has also been amended to reflect the small employer redundancy provisions of the *Furnishing Industry National Award 2003*.²⁹

[95] The scope of the *Aircraft Engineers (General Aviation) Award 1999*³⁰ has not been included in the exposure draft, as was suggested by some parties. Nor have provisions concerning aircraft engineers been included. It is proposed they be considered in Stage 3 as part of airline operations.

[96] As to other provisions of the exposure draft, this is another proposed modern award which would benefit from a rationalisation of its allowances provisions. The possible inclusion of the small employer redundancy provisions of the *Engine Drivers' and Firemen's (ACT) Award 2000*³¹ in the Manufacturing Modern Award is, as we suggested in our 19 December 2008 decision, a matter interested parties should also address.

Private transport industry (road, non passenger)

[97] We have decided to publish three exposure drafts. They are the *Road Transport and Distribution Award 2010* (RT&D Modern Award), the *Road Transport (Long Distance Operations) Award 2010* (RT Long Distance Modern Award) and the *Transport Industry (Cash in Transit) Award 2010* (CIT Modern Award). Each draft is of an industry award with the coverage described by reference to the industry of the relevant employers.

[98] The RT&D Modern Award covers the road transport and distribution industry as defined in the exposure draft. The definition is broad and is intended to incorporate the scope of the pre-reform *Transport Workers Award 1998* (Transport Workers Award)³² and NAPSAs operating in each state as the general industry transport award. It also incorporates the transport activities previously covered by freight forwarding, petrol and petroleum products, crude oil and gas and quarried materials awards. These are a subset only of the sectors covered by the exposure draft and the parties should give close consideration to the definition of the industry.

[99] We are aware that the definition of the industry does not reproduce the wording in each of the existing scope or incidence clauses in relevant pre-reform awards and NAPSAs. The parties should give consideration to whether there is a need to specifically identify other activities. In this respect, however, we note the breadth of paragraph 3.1(a) of the definition and it may not be necessary to specifically identify the various subcategories of those goods, wares and merchandise, etc.

[100] The coverage of the award also extends to the transport of goods, etc. where the work performed is ancillary to the principal business, undertaking or industry of the employer. This reflects the scope of the pre-reform *Transport Workers (Mixed Industries) Award 2002*.³³ That award contained a majority clause. The wording of that clause is not suitable for a modern award. We have included a draft provision in cl.4.3 of the RT&D Modern Award designed to operate in circumstances where the principal business of the employer is not road transport and distribution and that employer is covered by another modern award as is the relevant employee. The intention is that, in those circumstances, the other modern award will regulate the employee's terms and conditions. This issue has not arisen in any significant way during the making of the priority awards and we invite the parties' submissions in relation to the wording of this clause and any related matters.

[101] The coverage of the RT&D Modern Award also extends to activities previously covered by distribution awards. In this respect the definition contained in the pre-reform *Transport Workers (Distribution Facilities) Award 2004*³⁴ has been adopted. In the pre-drafting consultations the NUW submitted that the scope of this RT&D Modern Award should extend to that currently contained within a number of pre-reform storage awards. The draft RT&D Modern Award does not extend to those activities. The indicative list of awards that might be subsumed into this new modern award does not include the numerous storage industry pre-reform awards and NAPSAs and no employer respondents to those awards made any submissions to us in the Stage 2 pre-drafting consultations. Additionally we note that Storage services is to be dealt with in Stage 3. The matters raised by the NUW may be considered in the context of submissions and consultations in that stage.

[102] The classification structure and minimum rates of pay are based on the Transport Workers Award. The majority of pre-reform awards also reflect similar if not identical rates of pay, as do several of the NAPSAs, as the general industry transport award. The rates in the

Transport Industry (State) Award,³⁵ a New South Wales NAPSA, are considerably higher and we have not reproduced them in this exposure draft. The parties may wish to confer about the New South Wales rates and make further submissions about how they may be accommodated in a modern minimum safety net award.

[103] The exposure draft contains definitions of distribution facility employee and aerodrome attendant. It is likely that a number of other classification definitions will need to be included. The parties are requested to confer about this matter. We have not adopted the Transport Workers' Union of Australia (TWU) proposal for a new five level classification structure based on the standard of licence required to drive a particular type or class of vehicle. The wage rates and relativities in the TWU proposal were said to be based on the *Transport Industry (State) Award (NSW)*. This proposal was put on the day of the pre-drafting consultations and the other parties had no time to consider it. We have received no further submissions about the proposal. We invite the parties to give further consideration to the classification structure. Unless there is a level of consensus reached it is unlikely, in the context of this exercise, we will be able to introduce a significantly different classification structure. However, at the very least, we see this as an opportunity to consider a reduction in the number of grades in this RT&D Modern Award. At the moment there are ten grades, and, in relation to some of them, there is a very small wage increment. Consideration should be given to grouping a number of the grades together.

[104] The coverage of the draft RT&D Modern Award does not extend to employees in clerical or maintenance classifications. The TWU submitted that it should not extend to activities covered by awards in the Commission's airline or airport operations. The interaction between these awards and, for example, the work undertaken by an aerodrome attendant will need to be considered. In this respect we also note that the airline operations and the airport operations (other than retail) industries are to be considered in Stage 3.

[105] The draft RT Long Distance Modern Award is based on the pre-reform *Transport Workers (Long Distance Drivers) Award 2000 (LDD Award)*.³⁶ We considered the TWU submission that no award for this sector of the transport industry should be issued at this stage. We have decided that it is appropriate that we publish this exposure draft. If any relevant legislation is passed which impacts on the terms and conditions appropriate for such an award that will be taken into consideration.

[106] The classification structure in the LDD Award commences at Grade 3. The minimum weekly wages for Grades 3 to 10 are the same as the corresponding grades in the RT&D Modern Award. In this exposure draft we have described the grades as levels 1 through to 8 however it should be noted that, at least at this stage, the weekly rate in this exposure draft for Grade 1 lines up with that for Grade 3 in the RT&D Modern Award. The comments we have made earlier in this statement about the parties taking this opportunity to merge some of the existing grades apply equally to this exposure draft.

[107] The CIT Modern Award is based largely on the *Transport Workers (Armoured Vehicles) Award 2004 (Armoured Vehicles Award)*.³⁷ Little more needs to be said about this draft at this stage however we do refer to cl.16.1(d) of the draft. This provides for a Reserve Bank of Australia allowance which is an existing allowance in the Armoured Vehicles Award. The parties should give consideration to whether such an allowance, specific to a particular contract, is appropriate for a modern minimum safety net award.

Quarrying industry

[108] We publish an exposure draft of a *Quarrying Industry Award 2010*. The draft award applies to operators and other employees in the quarrying industry but does not include clerical or maintenance classifications. The minimum wages are those found in the *Quarry Industry—Victoria—Award 2000*³⁸ and are not dissimilar to rates in awards and NAPSAs applying generally in the industry although they are significantly lower than the New South Wales rates. Generally there is no provision for junior rates in the awards and NAPSAs in the industry and we have not included junior rates in the exposure draft.

[109] A number of allowances have been included, including an industry allowance. Other allowances, including some trades allowances proposed, have not been included. Relevant awards and NAPSAs have differing provisions in relation to span of hours, shift work penalties and overtime. The draft incorporates provisions approximating to federal award standards in those areas.

Sanitary and garbage disposal services

[110] We publish an exposure draft of a *Waste Management Industry Award 2010*. The draft is based largely on the terms of the federal award but also takes into account a degree of consensus between the TWU and the Waste Contractors and Recyclers Association of New South Wales. There was some debate during the pre-drafting consultations about award coverage. We have decided to proceed on the basis that waste management should be covered by an industry specific award rather than an award applying to the transport industry more generally. Interested parties are invited to make further submissions on the issue in light of the terms of the draft and other relevant considerations.

[111] The existing federal award is entitled the *Transport Workers' (Refuse, Recycling and Waste Management) Award 2001*.³⁹ It applies in all States except New South Wales and in the Northern Territory. There are NAPSAs applying in New South Wales. The rates in the New South Wales NAPSAs are considerably higher than the rates in the federal award and reflect a bargained approach to wage outcomes. The rates in the federal award reflect the results of award simplification and it appears, at least at this stage, that they are properly fixed minimum rates appropriate for a safety net award. The exposure draft includes the federal award rates. It also maintains the separate industry allowance in the federal award.

[112] The classification structures in the NAPSAs applying in New South Wales vary significantly from the federal award structure. We have not attempted to integrate the New South Wales classifications into the federal structure and would welcome further suggestions. We encourage the parties to confer and attempt to reach agreement on an appropriate structure.

BY THE COMMISSION:

PRESIDENT

¹ [2008] AIRCFB 550.

² AP790899CAN

³ www.airc.gov.au.

⁴ MA000017.

⁵ MA000010.

⁶ AP790741CRV.

⁷ AP815828CRV

⁸ AP816828CRV.

⁹ AP816842CRV.

¹⁰ Redundancy Case, PR032004, 8 June 2004.

¹¹ Transcript PN480, 1 December 2008 and PN1217–1222, 2 December 2008, before Watson SDP.

¹² AP791396CRV.

¹³ Print Q4287.

¹⁴ Print Q7661; (1998) 123 IR 240.

¹⁵ *ibid.* at p.18.

¹⁶ AN120191.

¹⁷ AP792355CRV.

¹⁸ AP796030CRV.

¹⁹ Print P4024, 25 August 1997.

²⁰ AP817265CRV.

²¹ See Iain Campbell and Manu Peeters, *Low Pay, Compressed Schedules and High Work Intensity: A Study of Contract Cleaners in Australia*, Australian Journal of Labour Economics, Volume 11, Number 1, 2008, pp.27–46.

²² AP784988CRV.

²³ AP772291.

²⁴ AP782505CR.

²⁵ AP772248.

²⁶ See table on p.4 of the Private Hospital Industry Employer Associations December 2008 submission.

²⁷ AP827785CRV.

²⁸ MA000002.

²⁹ AP825280CAV.

³⁰ AP765552.

³¹ AP805250CRA.

³² AP799474CNV.

³³ AP813166.

³⁴ AP832166.

³⁵ AN120594.

³⁶ AP805988CRV.

³⁷ AP833661CR.

³⁸ AP794082CRV.

³⁹ AP812785CNV.

List of Exposure Draft Modern Awards and Schedules

- *Aged Care Industry Award 2010*
- *Banking, Finance and Insurance Industry Award 2010*
- *Building and Construction Industry General On-site Award 2010*
- *Cleaning Services Industry Award 2010*
- *Clerks—Private Sector Award 2010—call centre provisions*
- *Cotton Ginning Award 2010*
- *Electrical, Electronic and Communications Contracting Industry Award 2010*
- *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010*
- *Health Professionals and Support Services Industry and Occupational Award 2010*
- *Horticulture Award 2010*
- *Joinery and Building Trades Award 2010*
- *Manufacturing and Associated Industries and Occupations Award 2010—coverage clause and small employer redundancy in the furnishing industry*
- *Market and Social Research Industry Award 2010*
- *Medical Practitioners Occupational Award 2010*
- *Nursery Industry Award 2010*
- *Nurses Occupational Industry Award 2010*
- *Pastoral Industry Award 2010*
- *Plumbing and Fire Sprinklers Contracting Industry and Occupational Award 2010*
- *Quarrying Industry Award 2010*
- *Road Transport and Distribution Award 2010*
- *Road Transport (Long Distance Operations) Award 2010*
- *Silviculture Industry Award 2010*
- *Skin, Hide and Wool Stores Award 2010*
- *Telecommunications Services Industry Award 2010*
- *Transport Industry (Cash in Transit) Award 2010*
- *Waste Management Industry Award 2010*
- *Supported Wage System Schedule*
- *National Training Wage Schedule*
- *School-based Apprentices Schedule*

Aged Care Industry Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Aged Care Industry Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth)

aged care industry means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility including in the home

Commission means the Australian Industrial Relations Commission or its successor

employee has the meaning in the Act

employer has the meaning in the Act

enterprise award has the meaning in the Act

NAPSA means notional agreement preserving a State award and has the meaning in the Act

NES means National Employment Standards

standard rate means the minimum wage for an aged care employee—level 6 in clause 14.

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

4.1 This industry award covers employers throughout Australia in the Aged Care Industry and their employees in the classifications listed in clause 14—Minimum weekly wages, to the exclusion of any other modern award.

4.2 The award does not cover an employee excluded from award coverage by the Act.

4.3 The award does not cover an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award.

- 4.4** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

- 7.1** Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

- 7.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress.

- 7.3** The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

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- 7.4** For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:
- (a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as at the date the agreement commences to operate; and
 - (b) the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.
- 7.5** The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.6** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) 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 must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **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 this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, 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 no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Employment categories

10.1 Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

10.2 Full-time employees

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 22.1 of this award.

10.3 Part-time employees

- (a) A part-time employee is an employee who is engaged to work less than full-time hours of an average of 38 hours per week and has reasonably predictable hours of work.
- (b) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.

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- (c) The terms of the agreement may be varied by agreement and recorded in writing.
- (d) The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.
- (e) Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata basis made according to the number of hours the employee would have worked on the day or days on which the leave was taken so as not to reduce the employee's wage below that level which the employee would have received had the employee not been absent.

10.4 Casual employees

- (a) A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed term employee, to work up to and including 38 ordinary hours per week.
- (b) A casual employee will be paid per hour worked at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements accrued by full-time employees.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

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

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 11.3.

12.5 Transitional provisions

- (a) Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
 - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
 - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 12.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications

All employees covered by this award must be classified according to the structure and definitions set out in Schedule A—Classification Definitions. Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

14. Minimum weekly wages

| | Per week |
|-----------------------------------|-----------------|
| | \$ |
| Aged care employee—level 1 | 580.00 |
| Aged care employee—level 2 | 605.00 |
| Aged care employee—level 3 | 630.00 |
| Aged care employee—level 4 | 637.60 |
| Aged care employee—level 5 | 660.00 |
| Aged care employee—level 6 | 697.00 |
| Aged care employee—level 7 | 710.00 |
| Aged care employee—level 8 | |
| Pay point 1 | 735.00 |
| Pay point 2 | 755.00 |
| Pay point 3 | 810.00 |
| Aged care employee—level 9 | |
| Pay point 1 | 825.00 |
| Pay point 2 | 855.00 |
| Pay point 3 | 862.00 |

15. Allowances

15.1 Adjustment of expense related allowances

- (a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

| Allowance | Applicable CPI figure |
|---|---|
| Meal allowance | Take away and fast foods sub-group |
| Clothing, equipment and tools allowance | Clothing and footwear group |
| Tools allowance | Tools component of the household appliances, utensils and tools sub-group |
| Vehicle/travel allowance | Private motoring sub-group |

15.2 Clothing and equipment

- (a) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate of \$1.23 per shift or part thereof on duty or \$6.24 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of \$0.32 per shift or part thereof on duty or \$1.49 per week, whichever is the lesser amount.
- (c) The uniform allowance, but not the laundry allowance, will be paid during all absences on leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (d) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.

15.3 Leading hand allowance

- (a) A leading hand is an employee who is placed in charge of not less than two other employees of a substantially similar classification, but does not include any employee whose classification denotes supervisory responsibility.
- (b) A leading hand will be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

| Leading hand in charge of: | % of Standard rate |
|-------------------------------------|---------------------------|
| Two to five other employees | 2.67 |
| Six to ten other employees | 3.81 |
| Eleven to fifteen other employees | 4.81 |
| Sixteen to nineteen other employees | 5.88 |

- (c) This allowance will be part of salary for all purposes of this award.
- (d) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

15.4 Meal allowance

- (a) An employee will be supplied with an adequate meal where an employer has adequate cooking and dining facilities or be paid a meal allowance in addition to any overtime payment as follows:
 - (i) When required to work after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour—\$10.00. Provided that where such overtime work exceeds four hours a further meal allowance of \$9.00 will be paid.
- (b) Clause 15.4(a)(i) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) On request meal allowance will be paid on the same day as overtime is worked.

15.5 Nauseous work allowance

An allowance of 0.05% of the standard rate per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid an allowance will be paid a minimum sum of 0.27% of the standard rate for work performed in any week.

15.6 Tool allowance

A tool allowance of \$10.25 per week for the supply and maintenance of tools will be paid to chefs and cooks who are not provided with all necessary tools by the employer.

15.7 Travelling, transport and fares

- (a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.74 per kilometre.
- (b) When an employee is involved in travelling on duty, if the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.
- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 15.7(b), which exceed the mode of transport, meals or the standard of accommodation agreed with the employer, for these purposes.

16. District allowances

16.1 Northern Territory

An employee in the Northern Territory is entitled to payment of a district allowance in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth):

- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

16.2 Western Australia and Queensland

An employee in Western Australia or Queensland is entitled to payment of a district allowance in accordance with the terms of a NAPSA or an award made under the *Workplace Relations Act 1996* (Cth):

- (a) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under that Act had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

16.3 This clause ceases to operate on 31 December 2014.

17. Payment of wages

Wages are to be paid weekly or fortnightly.

17.1 Method of payment

Subject to clause 17.3, by no later than payday, wages must be paid by cash or electronic funds transfer, the latter into the bank or financial institutional account nominated by the employee.

17.2 Termination

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 owing to an employee will be made to the employee by no later than the last day of the formal notice period.

17.3 Delay

Notwithstanding the above, an employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of this clause, for example bank error or delay.

18. Accident pay

18.1 Subject to clause 18.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

18.2 The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

18.3 This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.

18.4 This clause ceases to operate on 31 December 2014.

19. Supported wage system

See Schedule B.

20. National training wage

See Schedule C.

21. Superannuation

21.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

21.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

21.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 21.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 21.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 21.3(a) or (b) was made.

21.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b) to one of the following superannuation funds:

- (a) First State Superannuation Scheme;
- (b) Health Industry Plan;
- (c) Health Employees Superannuation Trust of Australia (HESTA);
- (d) Health Super Fund;
- (e) National Catholic Superannuation Fund;
- (f) Sisters of Mercy Staff Superannuation Scheme;
- (g) Sunsuper;
- (h) Tasplan;
- (i) Uniting Church Employees Superannuation Plan; or
- (j) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

21.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b):

Paid leave—while the employee is on any paid leave;

Work-related injury or illness—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

- (a) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
- (b) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

22. Ordinary hours of work and rostering

22.1 Ordinary hours of work

The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 114 hours per 21 days or 152 hours per four week period, and will be worked either:

- (a) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
- (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO); or
- (c) Eight hours on a day shift or 10 hours on a night shift.

22.2 Span of hours

- (a) The ordinary hours of work for a day worker will be worked between 6.00 am and 6.00 pm Monday to Friday.
- (b) A shiftworker is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker, as defined in clause 22.1(a).

22.3 Rostered days off

Employees, other than a casual employee, will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28 day cycle. Where practicable, days off will be consecutive.

22.4 Rest breaks between rostered work

- (a) An employee will be allowed a break of not less than 10 hours between the termination of one shift or period of duty and the commencement of another.
- (b) By mutual agreement, the 10 hour rest break may be reduced to eight hours.

22.5 Accumulation and taking of accrued days off (ADOs)

- (a) This clause will only apply to full-time employees.
- (b) Where an employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work, as set out in clause 22.1, ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (c) Where an employee's employment terminates for any reason, accumulated ADOs will be paid to the employee at ordinary rates.
- (d) The taking of an employee's ADO will be determined, by mutual agreement between the employee and the employer, having regard to the needs of the place of employment or sections thereof. Such ADO will, where practicable, be consecutive with the rostered days off prescribed in clause 22.3 above. ADOs will not be rostered on public holidays.

22.6 Rosters

- (a) The ordinary hours of work for each employee will be displayed on a roster in a place conveniently accessible to employees. Such roster will be displayed at least two weeks prior to the commencing date of the first working period in any roster subject to clause 22.6(c) below.
- (b) In the case of homecare employees, alternative means of communicating change of rosters such as telephone communication, direct contact, mail or facsimile will be accepted.
- (c) It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.
- (d) Seven days notice will be given of a change in a roster. However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency.
- (e) This clause will not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.
- (f) Where practicable, ADOs will be displayed on the roster.
- (g) This clause will not apply to hostel supervisors.

22.7 Minimum engagements

- (a) Full-time employees will receive a minimum payment of four hours for each engagement in respect of ordinary hours of work.
- (b) Permanent part-time and casual employees, other than homecare employees, will receive a minimum payment of two hours for each engagement.
- (c) Permanent part-time homecare employees and casual homecare employees will receive a minimum of one hour for each engagement.
- (d) Subject to clause 22.8, except for meal breaks, the hours of work on any day will be continuous.

22.8 Broken shifts

With respect to broken shifts:

- (a) **Broken shift** for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.
- (b) A broken shift may be worked for up to four weeks where there is mutual agreement between the employer and employee to work the broken shift.
- (c) Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clause 25—Overtime penalty rates, with shift allowances being determined by the commencing time of the broken shift.

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- (d) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.
- (e) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

22.9 Sleepovers

Employees may, in addition to normal rostered shifts, be required to sleepover. A sleepover means sleeping in at night in order to be on call for emergencies.

The following conditions will apply to each night of sleepover:

- (a) The span for a sleepover will be not less than eight hours and not more than 10 hours on any one night.
- (b) Employees will be provided with free board and lodging for each night on which they are required to sleep over.
- (c) Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.
- (d) In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of \$36.00 for each night on which they sleepover.
- (e) No work other than that of an emergency nature will be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
- (f) An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 22.9(d).
- (g) All time worked during any sleepover will count as time worked and be paid for in accordance with the following provisions:
 - (i) All time worked by full-time employees during any sleepover will be paid for at overtime rates.
 - (ii) All time worked by permanent part-time employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or eleven hours where there are no such full-time employees, then the excess hours worked on that day will be paid for at overtime rates; and provided further that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, will be paid for at overtime rates.

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- (iii) All time worked by casual employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, will be paid for at overtime rates.
- (iv) And provided further that where the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 22.9(j) of this clause will apply.
- (h) A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
- (i) No employee will be required to sleepover during any part of their rostered days off or ADOs.
- (j) An employee (whether a full-time employee, permanent part-time employee or casual employee) who performs so much work during sleepover periods between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times will, subject to this clause, be released after completion of such work until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instruction of the employer, such an employee resumes or continues to work without having eight consecutive hours off duty the employee will be paid at double time of the appropriate rate until they are released from duty for eight consecutive hours and be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (k) Casual employees may only be used for sleepovers when full-time employees or permanent part-time employees are not available for that duty. In no case will casual employees be used exclusively, or almost exclusively, for sleepovers.

Nothing in this clause will preclude the employer from rostering an employee to work shift work instead of undertaking sleepovers.

23. Saturday and Sunday work

- 23.1** Employees whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 26—Shiftwork.
- 23.2** Casual employees, who work less than 38 hours per week, will not be entitled to payment in addition to any casual loading in respect of their employment between midnight on Friday and midnight on Sunday.

24. Breaks

24.1 Meal breaks

- (a) Each employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.
- (b) Where an employee is required to remain on call or available during a meal break, an employee will be paid at time and one half for any time actually worked during the meal break.

24.2 Tea breaks

- (a) Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each employee on duty during each ordinary shift of 7.6 hours or more.
- (b) Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each four hour period.
- (c) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.
- (d) Tea breaks will count as time worked.

25. Overtime penalty rates

25.1 Overtime rates

(a) Full-time employees

A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day:

- (i) for all authorised overtime on Monday to Friday, payment will be made at the rate of time and one half for the first two hours and double time thereafter;
- (ii) for all authorised overtime on a Saturday or Sunday, payment will be made at the rate of double time; and
- (iii) for all authorised overtime on a public holiday, payment will be made at the rate of double time and one half.

Overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 26.1.

(b) Part-time employees

- (i) All time worked by part-time employees in excess of 38 hours per week or 76 per fortnight, as the case may be, will be paid for at the rate of time and one half for the first two hours and double time thereafter, except that on Saturdays and Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and one half.

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- (ii) All the time worked by part-time employees which exceeds 10 hours, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half.
 - (iii) Time worked up to hours prescribed in clause 25.1(b)(ii) will not be regarded as overtime but an extension of the contract hours for that day and will be paid for the ordinary rate of pay.
- (c) **Time off instead of payment for overtime**

By mutual agreement, an employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

 - (i) Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.
 - (ii) Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
 - (iii) An employee cannot be compelled to take time off instead of overtime.
- (d) **Rest period after overtime**
 - (i) An employee, other than a casual, who works so much overtime between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
 - (ii) If on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- (e) **Recall to work overtime**

An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee will be released from duty.
- (f) **Rest break during overtime**
 - (i) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked.

- (ii) The meals referred to in clause 25.1(f)(i) will be allowed to the employee free of charge. Where the facility is unable to provide such meals, a meal allowance, as prescribed in clause 15.1 will be paid to the employee concerned.

26. Shiftwork

26.1 Shift allowances and penalty rates

Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week will only be entitled to the additional rates where their shifts commence prior to 6.00 am or finish subsequent to 6.00 pm.

- (a) Afternoon shift commencing at 10.00 am and before 1.00 pm—10%
- (b) Afternoon shift commencing at 1.00 pm and before 4.00 pm—12.5%
- (c) Night shift commencing at 4.00 pm and before 4.00 am—15%
- (d) Night shift commencing at 4.00 am and before 6.00 am—10%

27. Higher duties

27.1 An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) the time so worked for two hours or less; or
- (b) a full day or shift where the time so worked exceeds two hours.

Part 6—Leave and Public Holidays

28. Annual leave

Annual leave is provided for in the NES. This clause contains additional provisions.

28.1 Quantum of annual leave

- (a) In addition to the entitlements in the NES a shiftworker or an employee who works for more than four ordinary hours on 10 or more weekends is entitled to an additional week's annual leave on the same terms and conditions.
- (b) For the purpose of the NES, a shiftworker is defined as an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker as defined in clause 22.2(a).

28.2 Annual leave loading

- (a) In addition to their ordinary pay, an employee, other than a shift worker, will be paid an annual leave loading of 17.5 % of their ordinary rate of pay.

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- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
- (i) annual leave loading of 17.5% of their ordinary rate of pay; or
 - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

29. Public holidays

Public holidays are provided for in the NES. This clause contains additional provisions.

29.1 Payment for working on a public holiday

(a) **Full-time day workers**

A full-time employee who works their ordinary hours Monday to Friday and starts between 6.00 am and 10.00 am will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:

- (i) payment of an additional sum equal to 150% for hours worked; or
 - (ii) have the same number of hours worked added to their annual leave.
- The election in clause 29.1(a)(i) and (ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
 - A full-time employee who works their ordinary hours Monday to Friday and starts between 6.00 am and 10.00 am who does not work on a public holiday will be paid their ordinary pay for that day.
 - Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

(b) **Part-time employees**

- (i) A part-time employee will only be entitled to payment for those public holidays that fall on days they are ordinarily rostered to work.
- (ii) A part-time employee will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:
 - payment of an additional sum equal to 150% for hours worked; or
 - have the same number of hours worked added to their annual leave.
- (iii) The election in clause 29.1(b)(ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- (iv) A part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

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- (v) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

(c) Casual employees

- (i) A casual employee will be paid only for those public holidays they work at the total rate of 250% for hours worked.
- (ii) Payments under clause 29.1(c)(i) are instead of and replace any casual loading otherwise payable under this award.
- (iii) Payments under this clause are instead of any addition rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

30. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

31. Community service leave

Community service leave is provided for in the NES.

Schedule A—Classification Definitions

A.1 Aged care employee—level 1

Entry level:

An employee with less than three months work experience in the industry and who performs basic duties.

An employee at this level:

- Works within established routines, methods and procedures.
- Has minimal responsibility, accountability or discretion.
- Works under direct or routine supervision, either individually or in a team.
- No previous experience or training is required.

Indicative tasks performed at this level are:

General and administrative services

General Clerk

Laundry Hand

Cleaner

Assistant Gardener

Food services

Food Services Assistant

A.2 Aged care employee—level 2

An employee at this level:

- Is capable of prioritising work within established routines, methods and procedures.
- Is responsible for work performed with a limited level of accountability or discretion.
- Works under limited supervision, either individually or in a team.
- Possesses sound communication skills.
- Requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

General Clerk/Typist (between 3 months and less than 1 years service)

Laundry Hand

Cleaner

Gardener (non-trade)

Maintenance/Handyperson (unqualified)

Driver (less than 3 tonne)

Food services

Food Services Assistant

A.3 Aged care employee—level 3

An employee at this level:

- Is capable of prioritising work within established routines, methods and procedures (non admin/clerical).
- Is responsible for work performed with a medium level of accountability or discretion (non admin/clerical).
- Works under limited supervision, either individually or in a team (non admin/clerical).
- Possesses sound communication and/or arithmetic skills (non admin/clerical) .
- Requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical).
- An admin/clerical employee who undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

General and administrative services

General Clerk/Typist (second and subsequent years of service)

Receptionist

Pay Clerk

Driver (less than 3 tonne) who is required to hold a St John Ambulance First Aid Certificate

Food services

Cook

Personal care

Personal Care Worker
Grade 1

A.4 Aged care employee—level 4

An employee at this level:

- Is capable of prioritising work within established policies, guidelines and procedures.
- Is responsible for work performed with a medium level of accountability or discretion.
- Works under limited supervision, either individually or in a team.
- Possesses good communication, interpersonal and/or arithmetic skills.
- Requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Senior Clerk

Senior Receptionist

Maintenance/Handyperson (qualified)

Driver (3 tonne and over)

Gardener (Trade)

Food services

Senior Cook

Personal care

Personal Care Worker
Grade 2

A.5 Aged care employee—level 5

An employee at this level:

- Is capable of functioning semi autonomously, and prioritising their own work within established policies, guidelines and procedures.
- Is responsible for work performed with a substantial level of accountability.
- Works either individually or in a team.
- Requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical).
- May require basic computer knowledge or be required to use a computer on a regular basis.
- Possesses administrative skills and problem solving abilities.
- Possesses well developed communication, interpersonal and/or arithmetic skills
- Requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Secretary Interpreter (unqualified)

Food services

Chef Grade C

Personal care

Personal Care Worker
Grade 3

A.6 Aged care employee—level 6

An employee at this level:

- Is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures.
- Is responsible for work performed with a substantial level of accountability and responsibility.
- Works either individually or in a team.
- May require comprehensive computer knowledge or be required to use a computer on a regular basis.
- Possesses administrative skills and problem solving abilities.
- Possesses well developed communication, interpersonal and/or arithmetic skills
- May require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Maintenance Tradesperson (Advanced)

Gardener (Advanced)

Food services

Chef Level B

A.7 Aged care employee—level 7

An employee at this level:

- Is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures.
- Is responsible for work performed with a substantial level of accountability and responsibility.

May supervise the work of others, including work allocation, rostering and guidance.

- Works either individually or in a team.
- May require comprehensive computer knowledge or be required to use a computer on a regular basis.
- Possesses developed administrative skills and problem solving abilities.
- Possesses well developed communication, interpersonal and/or arithmetic skills
- May require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Clerical Supervisor

Interpreter (Qualified)

Gardener Superintendent

General Services Supervisor

Food services

Chef Grade A

Food Services Supervisor

Personal care

Personal Care Worker
Grade 4

A.8 Aged care employee—level 8

Employees at this level will typically have worked or studied in a relevant field and will have achieved a standard of relevant and/or specialist knowledge and experience sufficient to enable them to independently advise on a range of activities and features and contribute, as required, to the determination of objectives, within the relevant field/s of their expertise.

Employees at this level are responsible and accountable for their own work; and may have delegated responsibility for the work under their control or supervision, in terms of, inter alia, scheduling workloads, resolving operations problems, monitoring the quality of work produced as well as counselling staff for performance as well as work related matters.

Employees at this level would also be able to train and to supervise employees in lower levels by means of personal instruction and demonstration. They often exercise initiative, discretion and judgment in the performance of their duties.

The possession of relevant post secondary qualifications may be appropriate but not essential.

Indicative typical duties and skills in this level may include:

- Operates and is responsible for a complex and diverse payroll system.
- Apply detailed knowledge of organisation's objectives, performance, projected areas of growth, product trends and general industry conditions for the purposes of assisting in developing policy or new products and services to meet changing market needs or other circumstances.
- Application of computer software packages including evaluating and determining optimum software solutions or the integration of complex word processing/data/graphics text.
- Prepare internal reports for management in any or all of the following areas:
 - (a) account/financial
 - (b) staffing
 - (c) legislative requirements
 - (d) other significant company activities/operations.
- Finalise quotations or costings by applying a detailed knowledge of variable inputs, margins, market conditions, supply and delivery arrangements.

A.9 Aged care employee—level 9

Work at this level is usually performed in relation to established priorities, task methodology and work practices to achieve results in line with the organisation goals.

The work may include preparing papers and reports, drafting complex correspondence for senior employees, undertaking activities of a specialist or detailed nature, assisting in the preparation of procedural guidelines, providing, interpreting and analysing information for clients or other interested parties, exercising specific process responsibilities, and overseeing and co-ordinating the work of subordinate staff.

Work at this level includes supervision of a work group, small work area or office within the total organisational structure and co-ordination of a range of organisation functions.

Work is performed under general direction as to work priorities and may be of a technical or professional, project, procedural or processing nature, or a combination of these.

Direction exercised over work performed at this level may be less direct than at lower levels and is usually related to task methodologies and work practices. Staff would be expected to set priorities and to monitor work flow in the area of responsibility.

The work at this level requires the application of knowledge usually gained through previous experience in the discipline or from post secondary or tertiary study. The work may require the co-ordination of a range of organisation functions and the exercising of judgment and/or delegated authority in areas where precedents or procedures are not clearly defined.

Independent action may be exercised at this level, eg. developing procedures, management strategies and guidelines.

Indicative typical duties and skills at this level may include:

- Supervision of staff, setting priorities, monitoring work flow, and the development of strategies or work practices.
- Responsibility for the development of appropriate training programmes related to group development.
- Application of equal employment opportunity and industrial relations principles.
- Providing advice in relation to personal and career development related to work requirements.
- Liaison or communication with clients or other interested groups.
- General knowledge of the organisation's operations, combined with specialist knowledge of major activities within the work area.
- Ability to investigate interpret or evaluate information where legislation, regulations, instructions or procedural guidelines do not give adequate or specific answers.