

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996  
s.33 action on the Commission's own motion  
(C No. 30548 of 1998)

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the  
Workplace Relations and Other Legislation Amendment Act 1996  
(C No. 00167 of 1998)

**CHILDREN'S SERVICES (VICTORIA) AWARD 1995**  
(ODN C No. 20079 of 1993)  
[Print P 1906 [C077211

Children's service employees  
services

Health and welfare

COMMISSIONER HINGLEY  
1999

MELBOURNE, 25 JANUARY

Award simplification.

**ORDER**

A. Further to the decision issued by the Commission on 30 September 1998 [Print Q69591 the above award is varied as follows:

By deleting all clauses, schedules and appendices and inserting the following:

**1. AWARD TITLE**

This award shall be known as the Children's Services (Victoria) Award 1998.

**2. ARRANGEMENT**

**Part 1 - Application and operation of award**

1. Award title
2. Arrangement 1 Anti-discrimination 4. Previous award superseded
5. Incidence 6. Locality
7. Term of operation
8. Parties bound

**Part 2 - Award flexibility**

9. Index of facilitative provisions
10. Enterprise flexibility

**Part 3 - Dispute resolution**

11. Procedure to resolve industrial disputation

#### **Part 4 - Employer and employee duties, employment relationship and related arrangements**

- 12. Terms of employment
- 13. Redundancy
- 14. Termination of employment

#### **Part 5 - Wages and related matters**

- 15. Classification structure
- 16. Wage rates
- 17. Mixed functions (higher duties)
- 18. Payment of wages
- 19. Allowances
- 20. Superannuation

#### **Part 6 - Hours of work, breaks, overtime, shift work, weekend work**

- 21. Hours of work
- 22. Make-up time
- 23. Meal interval
- 24. Overtime
- 25. Rest interval
- 26. Roster
- 27. Shift provisions
- 28. Time off in lieu of payment

#### **Part 7 - Leave of absence and public holidays**

- 29. Annual leave
- 30. Jury service
- 31. Long service leave for Registered Mothercraft Nurses employed prior to 22 February 1995
- 32. Parental leave
- 33. Personal/carer's leave
- 34. Public holidays

#### **Part 8 - Training and related matters**

- 35. Relationship to National Training Wage
- 36. Traineeship approval guidelines

#### **Part 9 - Accident pay**

- 37. Accident pay

#### **Schedule of respondents**

### **3. ANTI-DISCRIMINATION**

- 3.1** It is the intention of the respondents to this award to achieve the principal object in s.30) of the Workplace Relations Act 1996 by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or

mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

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

**3.3** Nothing in this clause is taken to affect:

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

**3.3.2** Until 22 June 2000, the payment of different wages for employees who have not reached a particular age;

**3.3.3** An employee, employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including any application to the Human Rights and Equal Opportunity Commission.

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

#### **4. PREVIOUS AWARD SUPERSEDED**

This award shall supersede all previous awards or orders relating to the employment within its scope of all employees whether or not members of the Australian Liquor, Hospitality and Miscellaneous Workers Union, but no right, obligation or liability accrued or incurred under any such previous award or order shall be affected hereby.

#### **5. INCIDENCE**

This award shall apply to the employment of employees being members or not of the Australian Liquor, Hospitality and Miscellaneous Workers Union, engaged in the performance of all work in or in connection with or incidental to, the industries and/or industrial pursuits of child care and early childhood education.

#### **6. LOCALITY**

This award shall apply to the state of Victoria.

#### **7. TERM OF OPERATION**

This award shall come into force from 1 October 1998 and shall remain in force for a period of six months.

#### **8. PARTIES BOUND**

This award shall be binding upon:

**8.1** The Australian Liquor, Hospitality and Miscellaneous Workers Union, its officers and its members; and

**8.2** All employers whose names are set out in the Schedules of Respondents hereto in respect of their employees whether members of the union or not.

#### **PART 2 - AWARD FLEXIBILITY**

## **9. INDEX OF FACILITATIVE PROVISIONS**

**9.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an individual employer and an employee, or the majority of employees, in the enterprise or part of the enterprise concerned.

**9.2** Facilitative provisions in this award are contained in the following clauses:

Subject matter Clause

Hours of work 21.1.1(e), 21.1.2

Leave of absence and public holidays 29.13

Make-up time 22,22.1

Overtime 24.5.2(a)

Preparation time 15.2

Public holidays 34.4

Regular part-time employment 12.2.2(a)

Roster 26

Shift provisions 27

Substitute days 21.3.1,21.3.2

Time off in lieu of payment 28.1

## **10. ENTERPRISE FLEXIBILITY**

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

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

**10.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.

**10.2** For the purpose of the consultative process the employees may nominate the Union or another to represent them.

**10.3** Where agreement is reached an application shall be made to the Commission.

## **PART 3 - DISPUTE RESOLUTION**

### **11. PROCEDURE TO RESOLVE INDUSTRIAL DISPUTATION**

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

**11.1.1** The employee and his/her supervisor will meet and confer on the matter;  
and

**11.1.2** If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

**11.2** If the matter is still not resolved a discussion shall be held between representatives of the employer and the Union or other employee representative.

- 11.3** If the matter cannot be resolved it may be referred to the Australian Industrial Relations Commission.
- 11.4** While the parties attempt to resolve the matter, work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

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

### **12. TERMS OF EMPLOYMENT**

An employee shall be engaged as either a full-time, regular part-time or casual employee, as defined. Upon being employed, the employer shall provide his/her employee with a letter setting out his/her employment status, classification and incremental level. Unless otherwise specified, an employee not employed as a casual shall be deemed to be employed by the week.

#### **12.1 Full-time employees**

A full-time employee is engaged for 38 hours per week or an average of 38 hours per week subject to the terms of his/her engagement.

#### **12.2 Regular part-time employment**

**12.2.1** An employer may employ regular part-time employees in any classification in this award. A regular part-time employee is an employee who:

- 12.2.1(a)** works less than full-time hours of 38 hour per week; and
- 12.2.1(b)** has reasonably predictable hours of work; and
- 12.2.1(c)** receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

**12.2.2** At the time of engagement, the employer and regular part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, the days of the week on which the employee shall work, and the actual starting and finishing times each day.

- 12.2.2(a)** The hours of work and pattern of working times may be varied in writing by mutual agreement between the employer and employee, or by the employer in the absence of agreement, by giving at least three days notice.

#### **12.3 Casual employment**

A casual employee is an employee who is not a full-time or regular part-time employee and shall be paid per hour 1/38th of the weekly wage prescribed for his or her classification by clause 15 - Classification structure of this award, plus 25% for all work done. Work performed on weekends or public holidays shall be paid at ordinary time plus 75%. Provided that an employee engaged as a casual shall be excluded from the provisions of clause 24 - Overtime, clause 33 -Personal/carer's leave and clause 29 - Annual leave.

## **13. REDUNDANCY**

### **13.1 Definition**

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

### **13.2 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 in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

### **13.3 Severance pay**

**13.3.1** In addition to the period of notice prescribed for ordinary termination in clause 14 - Termination of employment an employee whose employment is terminated by reason of redundancy must be paid, subject to further order of the Commission, the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance pay
1 year or less	nil
1 year and up to the completion of 2 years	4 weeks' pay
2 years and up to the completion of 3 years	6 weeks' pay
3 years and up to the completion of 4 years	7 weeks' pay
4 years and over	8 weeks' pay

**13.3.2** Weeks' pay means the ordinary time rate of pay for the employees concerned.

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

### **13.4 Employee leaving during notice period**

An employee whose employment is terminated by reason of redundancy may terminate his/her employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. However, in this circumstance the employee will not be entitled to payment in lieu of notice.

### **13.5 Alternative employment**

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

### **13.6 Time off during notice period**

**13.6.1** During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

**13.6.2** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

### **13.7 Superannuation benefits**

**13.7.1** Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under 13.3 the difference between the severance pay specified in that clause and the amount of the superannuation benefit he or she receives which is attributable to employer contributions only.

**13.7.2** If this superannuation benefit is greater than the amount due under 13.3 hereof then he or she shall receive no payment under that clause.

### **13.8 Employees exempted**

**13.8.1** This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct, and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

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

### **13.9 Employers exempted**

Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than fifteen employees.

### **13.10 Incapacity to pay**

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

## **14. TERMINATION OF EMPLOYMENT**

### **14.1 Notice of termination by employer**

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

Period of continuous service	Period of notice
Less than one year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

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

**14.1.3** Payment in lieu of the notice prescribed in 14.1.1 and/or 14.1.2 shall be made if the appropriate notice period is not given; Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

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

**14.1.5** The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

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

**14.1.7** For the purposes of this clause, continuity of service shall be calculated in the manner prescribed by 29.4 of this award.

#### **14.3** Notice of termination by employee

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

**14.3.2** Subject to financial obligations imposed on an employer by any Act, if an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

#### **14.4** Time off during period of notice

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

#### **14.5** Notice during sick leave

Notice of termination of employment shall not be given by either employer or employee during a period of sick leave with the object of avoiding their obligations under clause 33 - Personal/carer's leave.

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

### **15. CLASSIFICATION STRUCTURE**

#### **15. CLASSIFICATION STRUCTURE**

[15 substituted by V002 ppc 21Jul99]

##### **15.1 Definitions**

###### **15.1.1 Child Care Worker Level 1**

###### **15.1.1(a) Child Care Worker Level 1(a):**

- This is an unqualified employee involved in the delivery of a children's services programme, whose duties would include some or all of the following:
- " implement an early childhood programme under direct supervision;
- " assist in the implementation of daily routines;
- " ensure the health and safety of each child;
- " give each child individual attention and comfort as required;
- " work in accordance with the licensing requirements under the Act;
- " understand Centre policy and work accordingly at all times.

###### **15.1.1(b) Childcare Worker Level 1(b)**

- implement an early childhood programme under routine supervision;
- implement daily routines;
- ensure the health and safety of each child, through the provision of in-service training as required;
- develop increased understanding of the individual needs of each child as required;
- give each child individual attention and comfort as required;
- have an understanding of, and work in accordance with, licensing requirements under the Act;
- understand Centre policy and work accordingly at all times.

###### **15.1.1(c) Childcare Worker Level 1(c)**

- implement an early childhood programme;
- understand and proactively implement daily routines;
- have a developed knowledge of the health and safety of each child;
- attend in-service training as required on issues such as first aid;
- understand the individual needs of each child, and provide care accordingly;
- give each child individual attentions and comfort as required;
- have a detailed understanding of, and act in accordance with, the licensing requirements under the Act;
- understand Centre policy and work accordingly at all times.

### **15.1.2 Child Care Worker Level 2**

This is an employee involved in the delivery of a children's services programme, who has completed one of the following:

- the TAFE Certificate in Child Care (Assistant) Course;
- Certificate III in Children\_s Services;
- Certificate IV in Community Services - Childcare (traineeship);
- or possesses in the opinion of the employer sufficient knowledge and experience to perform the duties at this level;
- or has completed a Traineeship pursuant to clause 36 - Traineeship approval guidelines of this award.

#### **15.1.2(a) Childcare Worker Level 2(a)**

Whose duties, in addition to those duties performed by a Child Care Worker Level I, would include some or all of the following:

- " assist in the preparation and implementation of programmes suited to the needs of individual children and groups;
- " responsibility for reporting observations of individual children or groups for programme planning purposes;
- " undertake work with individual children with particular needs under direct supervision.

#### **15.1.2(b) Childcare Worker Level 2(b)**

- " assist in the preparation and implementation of programmes suited to the needs of individual children and groups based on the general observation of each child;
- " reporting observations of individual children or groups for programme planning purposes;
- " foster children's cognitive development through in-service training
- " facilitate play;
- " undertake work with individual children with particular needs under routine supervision.

#### **15.1.2(c) Childcare Worker Level 2(c)**

- " provide direct assistance in the preparation and implementation of programmes suited to the needs of individual children and groups;
- " responsibility for reporting observations of individual children or groups for programme planning purposes;
- " undertake work with individual children;
- " support the emotional and psychological development of children through in-service training as required;
- " support the social and language development of children.

### **15.1.3 Child Care Worker Level 3**

**15.1.3(a)** This is an employee involved in the delivery of a children's services programme, who is either:

GROUP (A): Persons who are either qualified (other than qualifications outlined in Groups (B) and (C)) in accordance with the Children's Services Centres Regulations 1998 Regulation number 56. Persons employed in this category shall be employed from level 3.1 to 3.6.

GROUP (B): Persons who hold an Advanced Certificate or Associate Diploma in Child Care Studies including persons with these qualifications who were registered Mothercraft Nurses, persons who hold a Diploma of Community Services Childcare, or a Diploma in Children's Services, are entitled to salary subdivisions set out above for Group (B). Persons employed in this category shall be employed from level 3.4 to 3.9.

GROUP (C): Persons who hold a three year Degree or Diploma in Child Care Studies or equivalent qualification are entitled to salary subdivisions set out above for Group (C). Persons employed in this category shall be employed at level 3.6 to 3.9.

GROUP (D): Persons with the qualifications outlined in (A) or (B) or (C) above, but who undertake additional responsibilities to those outlined in 15.1.3(a), including co-ordination of the activities of more than one group, supervising workers and assisting in administrative functions, are entitled to salary subdivisions set out above for Group (D), provided that they shall maintain their existing wage rate if higher at the time of appointment. Persons employed in this category shall be employed at level 3.7 to 3.9, provided that where an employee is in receipt of a wage higher than that contained within this award, the higher rate shall apply.

and

**15.1.3(b)** Whose duties will include the following:

- " work as the person in charge of a group of children in the age range, 0 to 12 years;
- " develop, plan, implement, and evaluate in conjunction with the Director or Assistant Director a developmental program;
- " supervise qualified or unqualified workers caring for the group of children;
- " liaise with parents;
- " ensure a safe environment is provided;
- " ensure that records are maintained and are up to date concerning each child in their care;
- " develop, implement and evaluate daily routines;
- " be responsible to the Director or Assistant Director for the assessment of students on placement;
- " ensure the policies of the Centre or Service are adhered to.
- " be aware of and comply with all relevant regulations.

**15.1.3(c)** Progression through the relevant salary sub-divisions shall be dependent upon the advancement of skills attained via in-service training in areas such as health and safety, first aid, Regulations and Licensing requirements, knowledge of, and participation in, accreditation.

#### 15.1.4 Child Care Worker Level 4

**15.1.4(a)** This is a qualified employee who is qualified in accordance with the Children's Services Centres Regulations 1998,

and

**15.1.4(b)** in addition to the duties of a Child Care Worker Level 3, performs the duties of a Child Care Worker Level 4, which would include the following:

- " carrying out the work of an Assistant director;
- " supervising qualified and unqualified workers;
- " planning and coordinating in-service training for the centre or service;
- " planning and implementing special programmes such as integrating children with disabilities or children of a non-English speaking background;
- " assist the Director in the performance of any duty of a Director;
- " assumes the responsibilities and duties of the Director, in the Director's absence, where such absence does not exceed two complete consecutive working days.

#### 15.1.5 Director

**15.1.5(a)** This is an employee who is a person entrusted with the control or superintendence of a day child care centre notwithstanding that he or she may be accountable to another person who does not devote his or her whole time to the management of the centre.

**15.1.5(b)** Provided that a person appointed to the position of Director of a day child care centre shall be either:

**15.1.5(b)(i)** A person holding the Diploma in Arts (Child Care Studies);

**15.1.5(b)(ii)** A person holding the Associate Diploma in Arts (Child Care); or

**15.1.5(b)(iii)** A person holding the Associate Diploma of Social Science (Child Care Studies)

**15.1.5(b)(iv)** A person possessing such experience, or holding such qualifications deemed by the employer to be appropriate to the position;  
and

**15.1.5(c)** Whose duties would include the following:

- " recruit staff in consultation with the management of a centre;
- " day to day accounts and handle clerical matters;
- " ensure that the centre or services adheres to all relevant regulations;
- " formulate and evaluate annual budgets with relevant authorities;
- " supervise the implementation of educational and/or developmental programmes for young children;
- " ensure that submissions for funding to the relevant authorities are made and monies received;
- " ensure that Government guidelines on access to centres or services are

- adhered to;
- " liaise with management committees or proprietors as appropriate.

### **15.2** Preparation time

A qualified full-time employee at Level 3 or above who is appointed by the employer to be responsible for the planning and implementation of the planned programme for the children in the Centre shall be entitled to two hours per week preparation time. Such time shall be taken at a time agreed by the employer and shall be free from other duties.

### **15.3** Examination leave

Employees shall be granted leave with full pay in order to travel to and attend child care examinations relevant to this clause and approved by the education institution. Provided that when an afternoon examination is scheduled an employee shall be allowed the morning for the examination study if so required by the employee.

**16. WAGE RATES**

16 substituted by V001 V002; V003 ppc 10Jun00]

**16.1 Adults**

<b>Classification</b>	<b>Award rate</b>
	<b>per week \$</b>
<b>Child Care Worker Level 1:</b>	
Level 1 (a)	407.60
Level 1 (b)	423.00
Level 1 (c)	428.10
<b>Child Care Worker Level 2:</b>	
Level 2 (a)	429.70
Level 2 (b)	439.90
Level 2 (c)	450.20

	<b>Subdivision</b>	<b>Award rate</b>
		<b>per week\$</b>
<b>Child Care Worker Level 3:</b>		
Level 3	1	489.40
Level 3	2	496.70
Level 3	3	504.00
Level 3	4	511.30
Level 3	5	518.50
Level 3	6	522.20
Level 3	7	533.20
Level 3	8	541.40
Level 3	9	551.10
<b>Child Care Worker Level 4:</b>		561.70

**Director**

1. Up to 25 children:

	Level (a)	671.20
	Level (b)	685.40
2.	26 to 44 children:	
	Level (a)	702.20
	Level (b)	723.70
3.	45 or more children:	
	Level (a)	740.90
	Level (b)	757.60

## 16.2 Juniors

	Percentage of wage for the classification _Child care worker Level 1(a)	Award rate per week
	%	\$
<b>Child Care Worker Level 1</b>		
<b>16 years of age or under</b>	<b>50</b>	<b>203.80</b>
17 years of age	60	244.56
18 years of age	70	285.32
19 years of age	80	326.08
20 years of age	90	366.84
<b>Child Care Worker Level 2</b>		
16 years of age or under	55	224.18
17 years of age	65	264.94
18 years of age	75	305.70
19 years of age	85	346.46
20 years of age	95	387.22

## Child Care Worker Levels 3, 4.

Employees less than 21 years of age shall be paid as adults, in accordance with 16.1.3 and 16.1.4 hereof.

Provided further that any employee classified as either a Junior, Child Care Worker, Child Care Worker (Trained), Children's Services Officer or Programme Co-ordinator at the date of operation of this award shall not suffer any disadvantage as a result of the making of the new award.

### **16.3 Absorption Clause**

The rates of pay in this award include the arbitrated safety net adjustment payable under the Safety Net Review \_ Wages May 2000 Decision [Print S5000]. This arbitrated safety net may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreement, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

**16.4** An employee not attending for duty shall, except as provided by clauses 34 -Public holidays, clause 29 - Annual leave, clause 33 - Personal/carer's leave, lose payment for the actual time of non-attendance.

## **17. MIXED FUNCTIONS (HIGHER DUTIES)**

An employee engaged in duties carrying a higher rate than his or her ordinary classification for two or more consecutive hours within any shift or day shall be paid for the time so worked at the higher rate provided that:

**17.1** the greater part of the time so worked is spent in performing duties carrying the higher rate;

**17.2** an employee engaged as a Child Care Worker Level 4 (Assistant Director) who is required to undertake the duties of a Director by reason of the Director's absence shall not be entitled to payment under this clause unless the Director's absence exceeds two complete consecutive working days;

**17.3** an employee engaged as a Child Care Worker Level 3 (D) who is required to undertake duties of the Director by reason of the Director's non-attendance outside of core hours shall not be entitled to payment under this clause;

**17.4** an employee who is required to undertake the duties of another employee by reason of the latter employee's absence from his or her duties for the purpose of attending (with pay) an approved training course (including in-service training) shall not be entitled to payment under this clause; and

**17.5** for the purposes of this clause, the duties of any employee shall be determined by reference to this award and his or her job description.

## **18. PAYMENT OF WAGES**

- 18.1** All wages shall be paid weekly or fortnightly.
- 18.2** Payment of wages shall be made not later than Thursday in any week, and during the ordinary hours of work. Provided that if such day is a holiday prescribed by this award, wages shall be paid on the previous day.
- 18.3** On the first pay day period occurring during his or her employment an employee shall be paid whatever wages are due to him or her up to the completion of his/her work on the previous day; Provided that this subclause shall not apply if an employer makes a practice of allowing advances to his/her employees approximating wages due.
- 18.4** Upon termination of employment, wages due to an employee shall be paid on the date of such termination.
- 18.5** An employer may deduct from the amount due to an employee such amount as is authorised in writing by such employee.
- 18.6** In the case of an employee whose ordinary hours of work are arranged in accordance with 21.1.1(a) or 21.1.1(b) so that he works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked.
- 18.7** In the case of an employee whose ordinary hours of work are arranged in accordance with 21.1.1(c) or 21.1.1(d) so that he works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.
- 18.8** Each employee shall be supplied on or before pay day with a statement in writing showing, or from which may be calculated the amount of ordinary pay overtime, penalty rates and allowances and the amount of deductions - for any purposes in respect of the amount paid.
- 18.9** All payments shall be made by cheque or in a manner otherwise agreed upon between the employer and employee and authorised in writing by the employee, including electronic funds transfer, EFT.
- 18.10** Explanation of averaging system

As provided in this subclause an employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle is to be paid his/her wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below.

- 18.10.1** In 21.1.1(c) or 21.1.1(d) provides that the ordinary hours of an employee may be arranged so that an employee is entitled to a day off on a fixed day or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.
- 18.10.2** If the 38-hour week is to be implemented so as to give an employee a day off in each work cycle this would be achieved if, during a work cycle of 28 consecutive days (that is over four consecutive weeks), the employee's ordinary hours were arranged on the basis that for three of the four weeks the

employee worked 40 ordinary hours each week and in the fourth week the employee worked 32 ordinary hours. That is, the employee would work for eight ordinary hours each day, Monday to Friday inclusive for three weeks and eight ordinary hours on four days in the fourth week - a total of nineteen days during the work cycle.

**18.10.3** In such a case the averaging system and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly rates set out for the employee's classification in clause 16 - Wage rates, and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

**18.10.3(a)** In effect under the averaging system, the employee accrues a "credit" each day the employee works actual ordinary hours in excess of seven hours 36 minutes. This "credit" is carried forward so that in the week of the cycle that employee works on only four days, the employee's actual pay would be for an average of 38 hours even though that week, the employee works a total of 32 ordinary hours.

**18.10.3(b)** Consequently, for each day an employee works eight ordinary hours the employee accrues a "credit" of 24 minutes (0.4 hours). The maximum "credit" the employee may accrue under this system is 0.4 hours on nineteen days; that is, a total of seven hours and 36 minutes.

**18.10.4** As provided in 18.11, an employee will not accrue a "credit" for each day the employee is absent from duty other than on public holidays, paid sick leave, annual leave, workers compensation, compassionate leave or jury service.

## **18.11** Absences from duty

**18.11.1** An employee whose ordinary hours are arranged in accordance with clause 21 - Hours of work, and is absent from duty (other than on public holidays, paid sick leave, annual leave, long service leave, workers compensation, compassionate leave or jury service) shall for each day the employee is so absent, lose average pay for that day calculated by dividing the employee's average weekly wage rate by five.

**18.11.1(a)** An employee who is absent from duty for part of a day shall lose average pay for each hour the employee is absent by dividing average daily pay by eight.

**18.11.2** Provided when an employee is absent from duty for the whole day on unpaid leave, the employee will not accrue a "credit" because he/she would not have worked ordinary hours that day in excess of 7 hours 36 minutes.

**18.11.3** An employee on unpaid leave for the whole of the day will have his/her average wage reduced in the last week of the cycle as follows:

$$\text{Total of "credits" not accrued during cycle} \quad \times \quad \frac{\text{average weekly pay}}{38}$$

**18.11.3(a)** Examples:  
An employee's ordinary hours are arranged so that the employee works eight ordinary hours on five days of each week for three weeks and eight ordinary

hours on four days of the fourth week.

**18.11.3(a)(i)** An employee on \$250 per week has a day off without pay in the first week of the cycle:

<b>Week of Cycle Payment</b>	<b>Payment</b>
1st week	4 days x \$50 = \$200
2nd and 3rd weeks	2 x \$250 = \$500
4th week	4 days x \$50 = \$200
	<b>plus</b>
	18 days by 0.4 hours x <u>average weekly pay</u>
	38
	= \$47.37

**18.11.3(a)(ii)** An employee on \$250 per week has four days off without pay in the fourth week.

<b>Week of Cycle Payment</b>	<b>Payment</b>
1st, 2nd and 3rd weeks	3 x \$250 = \$750
4th week	15 days by 0.4 hrs x <u>average weekly pay</u>
	38
	=\$39.47

## 18.12 Days off coinciding with pay day

In the event that a rostered day off falls on pay day the employer may pay wages to the employee or employees concerned on the next following working day. However, subject to the employer being able to make suitable arrangements the wages may be paid on the working day preceding the rostered day off.

## 19. ALLOWANCES

### 19.1 Vehicle allowance

**19.1.1** Where an employer requires an employee to use his/her own motor vehicle in the performance of his/her duties during normal working hours, such employee shall be paid an allowance as follows:

	<b>per kilometre per mile (cents)</b>	<b>per mile (cents)</b>
<b>Motor Cars</b>		
35 p.m.u. and over	58.3	93.9
under 35 p.m.u.	48.0	77.3
<b>Motorcycles</b>		
250cc and over	28.1	45.2
under 250cc	21.1	34.0

### 19.2 Uniforms and protective clothing allowances

**19.2.1** Where an employer requires an employee to wear a uniform and where no uniform is supplied by the employer an allowance at the rate of \$5.20 per week or \$1.04 per day

shall be paid to an employee in lieu of providing a uniform and the maintenance and cleaning of such clothing.

**19.2.2** Where work practices are such that protective clothing is necessary and where the employer does not provide such clothing, the employer shall reimburse an employee an allowance equivalent to the cost and ongoing maintenance of such protective clothing.

### **19.3 Telephone allowance**

**19.3.1** Where an employer requires an employee to install and/or maintain a telephone for the purpose of being on call the employer shall reimburse an allowance equal to the installation costs and subsequent rental charges on production of receipted account.

### **19.4 Overtime meal allowances**

An employee shall be paid meal money in addition to any overtime payment as follows:

**19.4.1** When required to continue work after the usual finishing hours of work beyond one hour (Monday to Friday inclusive), or in the case of a shift worker when the overtime work on any shift exceeds one hour - \$5.80. Provided that where such overtime work exceeds four hours a further meal allowance of \$4.64 shall be paid;

**19.4.2** When required to work more than five hours overtime on a Saturday or a Sunday, or more than five hours by a shift worker on his/her rostered day off - \$5.80 and a further \$4.64 when required to work more than nine hours on such day.

**19.4.3** Meal money shall be paid on the same day as overtime is worked or shall be paid with weekly or fortnightly pay.

The provisions of 19.4.1 , 19.4.2 and 19.4.3 shall not apply where an employer has his/her own cooking and dining facilities and supplies an adequate meal.

## **20. SUPERANNUATION**

### **20.1 Preamble**

#### **20.1.1 Superannuation Legislation**

**20.1.1(a)** The subject of superannuation contributions is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

**20.1.1(b)** Notwithstanding 20.1.1(a) hereof, the following provisions shall also apply.

### **20.2 Definitions**

**20.2.1** The fund for the purpose of this clause means:

**20.2.1(a)** The Health Employees' Superannuation Trust Australia (HESTA) established

and governed by a Trust Deed dated 30 July 1987 as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto; or

- 20.2.1(b)** Any other such fund which complies with the Superannuation Industry (Supervision) Act 1993 as amended and as may be agreed upon between the parties.
- 20.2.2** Ordinary time earnings for the purpose of this clause, shall mean and include the remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay including overaward payments, weekend penalties, shift allowances, and other allowances paid for all purposes of the award for working ordinary hours.
- 20.3** Employers to become a party to the fund
- 20.3.1** An employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.
- 20.3.2** Where an employer has not made application to become a participating employer in the fund but an employee of the employer has completed an application form and that form has been received by the fund, the employer shall become a participating employer in the fund upon the Trustee of the fund deeming the employer to be a participating employer. In such a case, the employer shall assume and be required to comply with all the obligations and duties of a participating employer in the fund.
- 20.3.3** An employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of employment. Each employee shall be required to complete the application and the completed application shall be forwarded to the fund by the employer on or before the last day of the calendar month subsequent to the employee commencing employment.
- 20.4** Eligibility of employees
- 20.4.1** Each employee who earns \$450 or more in a calendar month shall be eligible to join the fund upon commencement of employment. **20.4.2** Each employee who earns less than \$450 per calendar month shall be eligible to join the fund at the completion of three months employment.
- 20.4.3** Each employee shall be eligible to receive contributions from the date of eligibility notwithstanding the date the membership application prescribed in 20.3.3 was forwarded to the fund.
- 20.5** Employer contribution on behalf of each employee
- 20.5.1** An employer shall contribute to the fund in respect of each eligible employee such contributions as are required to comply with the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 as amended from time to time, as follows:
- 20.5.1(a)** 7% of ordinary time earnings as defined on behalf of each eligible employee, other than employers with a payroll not exceeding \$1m as defined in

accordance with the Superannuation Guarantee (Administration) Act 1992 who shall contribute 5%;

**20.5.1(b)** thereafter all employers regardless of size of payroll:

<b>Year of contribution</b>	<b>% of contribution</b>
1998/99	7%
1999/2000	7%
2000/01	8%
2001/02	8%
2002/03	9%

The amount of contributions to the fund shall be calculated to the nearest 10 cents, any fraction below 5 cents shall be disregarded.

**20.5.2** The fund and the amount of contributions paid in accordance with this clause and 20.5.6 hereof shall be included in pay advice notices provided by the employer to the employee.

**20.5.3** Contributions shall continue to be paid in accordance with this subclause during any period in respect of which an employee is entitled to receive accident pay in accordance with clause 37 - Accident pay of this award (if accident pay applies).

**20.5.4** Unpaid absences

An employer shall not be required to make contributions in respect of periods of unpaid absences. Where an unpaid absence occurs in a pay period, the employer shall make contributions proportionately to the wage received by the employee in that particular pay period. For the purposes of this clause, each pay period will stand alone. Accordingly, unpaid absences in one pay period will not carry over to another pay period.

**20.5.5** Cessation of contributions

An employer's obligation to make contributions on behalf of the employee ceases on the last day of employment of the employee with the employer. Contributions shall not be paid in respect of accrued annual leave paid on termination.

**20.5.6** Employee contributions

**20.5.6(a)** An employee may make contributions to the fund in addition to those made by the employer under this clause.

**20.5.6(b)** An employee who wishes to make additional contributions must authorise the employer in writing to pay into the fund, from the employee's wages, amounts specified by the worker in accordance with the fund Trust Deed and Rules.

**20.5.6(c)** An employer who receives written authorisation from an employee, must commence making deductions from the employee's wages within fourteen days of receiving the authorisation. Contributions so deducted shall be paid to the fund by the end of the calendar month subsequent to the month in which the deduction from the employee's wages was made.

**20.5.6(d)** An employee may vary the additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.

**20.5.6(e)** An employee shall have the right to adjust the level of contribution made on the employee's own behalf on the first of July each year provided that by agreement with the employer or in extenuating circumstances the employee may vary the additional contribution at other times.

#### **20.5.7 Exemptions**

**20.5.7(a)** Employers of an employee who is eligible for membership of a public sector statutory scheme as prescribed under the Superannuation Benefits Act 1977 (Vic) as amended, or in succession thereto, shall be exempted from the provisions of this clause.

**20.5.7(b)** Employers of an employee who is eligible for membership of the Local Authorities Superannuation Fund as provided under the Local Authorities Superannuation Act 1988 (Vic), as amended, or in succession thereto, shall be exempted from this clause.

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

#### **21. HOURS OF WORK**

**21.1** The hours for an ordinary week's work shall be an average of 38 for full-time employees, to be worked between the hours of 6.30 a.m. and 6.30 p.m. to be worked as follows:

**21.1.1** Full-time employees may be rostered to work the ordinary hours of work by utilising one of the following methods:

**21.1.1(a)** by employees working less than eight ordinary hours each day; or

**21.1.1(b)** by employees working less than eight ordinary hours on one or more days each week; or

**21.1.1(c)** by fixing one week day on which all employees will be off during a particular work cycle: or

**21.1.1(d)** by rostering employees off on various days of the week during a particular work cycle so that each employee has one dayoff during that cycle;

**21.1.1(e)** provided that the employer and an employee may, by agreement accrue stored days off to a maximum of twelve days and such days so accrued shall be taken at a time or times mutually agreed upon, or subject to reasonable notice by the employer or the employee.

**21.1.2** The employer and the majority of employees in the workplace concerned, or an individual employee, where there is genuine agreement, may agree that the ordinary working hours are to exceed eight on any day, thus enabling a week day off to be taken more frequently than would otherwise apply provided that:

**21.1.3** An employee may elect, with the consent of the employer, to take a rostered day off at any time.

**21.1.4** An employee may elect, with the consent of the employer to take rostered days off in part day amounts.

**21.2** Notice of days off

Except as provided in 21.3, employees entitled to a day off during their roster cycle must be advised by the employer at least four weeks in advance of the week day he/she is to take off.

**21.3** Substitute days

**21.3.1** An employer with the agreement of the majority of employees concerned may substitute the day an employee is to take off to meet the requirements of the business.

**21.3.2** An individual employee with the agreement of his/her employer may substitute the day he/she is to take off for another day.

**21.3.3** An employee would therefore work on what would normally have been his or her rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employee and the employer. Provided that no less than seven days notice is given before taking the banked rostered day(s) off.

**21.3.4** No payments or penalty payment shall be made to employees working under this substitute banked rostered day off. However the employer will maintain a record of the number of rostered days banked and will apply the Average Pay System during the weeks when an employee elects to take a banked rostered day(s) off.

**21.3.5** Employees terminating prior to taking any banked rostered day(s) off shall receive the following:

<u>Average weekly pay</u>	X	Number of banked substitute days
5		

**21.4** Rostered day off falling on public holiday

An employee whose rostered day off or rostered four hours off falls on a public holiday prescribed by clause 34 - Public holidays shall be granted an alternative day off or four hours off to be determined by mutual agreement between the employer and the employee.

**22. MAKE-UP TIME**

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees, or an individual employee where there is mutual agreement, at an enterprise may agree to establish a system of make-up time provided that:

**22.1** An employee may elect, with the consent of the employer to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award.

**22.2** An employee on shift work may elect, with the consent of their employer, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time at the shift work rate which would have been applicable to the hours taken off.

**23. MEAL INTERVAL**

An unpaid interval of not less than 30 minutes shall be allowed to each employee and shall be taken no later than five hours after commencing work.

## **24. OVERTIME**

**24.1** Subject to 24.3, all work performed in excess of or outside the ordinary working hours prescribed by this award shall be paid for all the rate of time and a half for the first two hours on any day and at the rate of double time thereafter, such double time to continue until the completion of the overtime work.

**24.2** Rest period before recommencing work

**24.2.1** When overtime work including work on a rostered day off or work on a Sunday or holiday is necessary, it shall wherever practicable be so arranged that an employee works not more than sixteen hours in any period of 24 consecutive hours.

**24.2.2** Subject to the exception referred to in 24.5.2 as to call-backs of less than three hours, when an employee finishes a period of work he/she shall, subject to this subclause be released until he/she has had eight consecutive hours off duty without loss of pay for his/her ordinary working time occurring during such absence.

**24.2.3** If on the instructions of his/her employer, such an employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at the rate of double time until he/she shall then be entitled to be absent until he/she has had eight consecutive hours off duty without loss of pay for his/her ordinary working time occurring during such absence.

**24.3** Overtime on Saturday

An employee required to work overtime on a Saturday shall be afforded at least three hours' work or paid for three hours at time and a half except where such overtime is continuous with overtime or work commenced on the previous day or completed the following day. Provided that where work continues over two days the minimum payment shall be for three hours at the appropriate rate.

**24.4** Transport of employees

Where an employee after having worked overtime has to travel at a time when reasonable means of transport is not available, his or her employer shall pay him or her ordinary time for the time reasonably occupied in travelling to and/or from his or her home.

This subclause shall not apply where the employer provides conveyance to and/or from the employee's home at the employer's cost.

**24.5** Compulsory overtime

**24.5.1** An employer may require an employee to work reasonable overtime and such employee shall work overtime in accordance with such requirements.

**24.5.2** Where an employee, following the completion of ordinary hours of duty, is called back to duty for the purpose of attending management committee meetings, staff/parent meetings or similar, or where the employee is requested in writing by the

employer to attend in-service training outside normal hours, in lieu of receiving overtime payments, such employee may take paid time off, subject to the following:

- 24.5.2(a)** In lieu of receiving payment for overtime worked in accordance with this clause, employees may choose, with the consent of the employer, to take time off, for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred. Such time in lieu shall be taken as mutually agreed between employer and employee, provided that accrual of such leave shall not extend beyond a 28 day period.
- 24.5.2(b)** Where such accrued time has not been taken within the 28 day period, such time shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.
- 24.5.2(c)** For the purpose of this clause, in accruing or calculating payment of overtime, each period of overtime shall stand alone.

## **25. REST INTERVAL**

At a time suitable to the employer two rest intervals of ten minutes each shall be given to all employees during each day, and shall be counted as time worked.

## **26. ROSTER**

The employer shall prepare a roster setting out employees' weekly and daily working hours, time of commencing duty, meal intervals, time off duty and time of ceasing duty which shall be kept posted or affixed in some conspicuous part of the premises in which persons subject to this award are employed, where it may be readily seen by such employees. The employer shall give at least three days notice before any alteration is made to such roster.

## **27. SHIFT PROVISIONS**

- 27.1** An employee whose rostered hours of ordinary duty finish between 6.30 p.m. and 8.00 a.m. or commence between 6.30 p.m. and 6 '30 a.m. shall be paid a shift work loading of 2.5% of their classification each rostered period of duty. Provided that an employee working rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5.00 a.m. shall be paid a shift loading of 4% of their classification each rostered period of duty. Any employee permanently working such rostered hours i.e. a period in excess of four consecutive weeks, shall be paid a shift loading of 5% of their classification each rostered period of duty.
- 27.2** Provided where in the absence of agreement an employee who is changed from working one shift to working another shift of which the commencement time differs by four hours or more shall be paid an additional amount of 4% of their classification for that occasion.
- 27.3** Where it is mutually agreed, in writing, to change shift the aforementioned 4% shall not apply.
- 27.4** In the case of a junior working shift work, the rate for calculation of shift allowance shall be first year adult child care worker.

## **28. TIME OFF IN LIEU OF PAYMENT**

**28.1** Despite provisions elsewhere in the award (excepting 24.5), the employer and the majority of employees, or an individual employee where there is mutual agreement, at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

**28.1.1** An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.

**28.1.2** Overtime taken as time off during ordinary time hours shall be taken at this ordinary time rate, that is an hour for each hour worked.

**28.1.3** An employer shall, if requested by an employee, provide payment of overtime as prescribed in clause 24 - Overtime, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.

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

### **29. ANNUAL LEAVE**

#### **29.1** Period of leave

A period of four weeks' leave shall be allowed annually to an employee after twelve months' continuous service (less the period of annual leave) to all employees, excluding casuals, with an employer respondent to this award.

#### **29.2** Annual leave exclusive of public holidays

Subject to this subclause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 34 - Public holidays, of this award and if any such holidays fall within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to the period of annual leave, time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday or he/she shall be paid one day's ordinary pay in lieu thereof.

#### **29.3** Broken leave

The annual leave shall be given and taken in a continuous period or in two separate periods, but not otherwise.

#### **Calculation of continuous service**

**29.4.1** For the purpose of this clause, service shall be deemed to be continuous notwithstanding:

**29.4.1(a)** any interruption or termination of the employment by an employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence; or

**29.4.1(b)** any absence from work on account of personal sickness or accident or on account of leave lawfully granted by an employer, or

**29.4.1(c)** any absence with reasonable cause proof whereof shall lie upon the employee.

**29.4.2** In cases of personal sickness or accident or absence with reasonable cause, an employee to become entitled to the benefit of this subclause shall inform his/her employer, in writing if practicable, within 24 hours of the commencement of such absence of his or her inability for duty as far as practicable the nature of the illness, injury or cause and the estimated duration of his/her absence. A notification given by an employee pursuant to clause 33 - Personal/carer's leave, shall be accepted as notification under this subclause.

**29.4.3** Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for purposes of this clause unless an employer during the absence or within fourteen days of the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

**29.4.4** A notice to an individual employee may be given by delivering it to him/her personally or by posting it to his/her last recorded address in which case it shall be deemed to have reached him/her in due course of post.

**29.4.5** In calculating the period of twelve months' continuous service any such absence as aforesaid shall not, except to the extent of not more than fourteen days in a twelve monthly period in the case of sickness or accident, be taken into account in calculating the period of twelve months' continuous service.

## **29.5** Calculating the service

**29.5.1** Service before the date of this award shall be taken into consideration for the purpose of calculating annual leave, but an employee shall not be entitled to leave payment in lieu thereof for any periods in respect of which leave or a payment in lieu thereof has been allowed. The period of annual leave to be allowed under this subclause shall be calculated to the nearest day, any broken part of a day in the result not exceeding half day to be disregarded. **29.5.2** Where an employer is a successor or assignee or transmittee of a business, if an employee was in the employment of the employer's predecessor at the time when he/she became such successor or assignee or transmittee, the employee in respect of the period during which he/she was in the service of the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

## **29.6** Calculation of month

For the purpose of this clause a month shall be reckoned as commencing with the beginning of the first day of the employment or period of employment in question and as ending at the beginning of the day which in the latest month in question has the same number as that which the commencing day had in its month and, if there is no such day in such subsequent month, shall be reckoned as ending at the end of such subsequent month.

## **29.7** Leave to be taken

The annual leave provided for by this clause shall be allowed and shall be taken and, except as provided by 29.10 and 29.12, payment shall not be made or accepted in lieu of annual leave.

## **29.8 Time of taking leave**

Annual leave shall be given at a time fixed by an employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than four weeks notice to an employee.

## **29.9 Leave allowed before due date**

**29.9.1** An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case, a further period of annual leave shall not commence to accrue until after the expiration of the twelve months' in respect of which annual leave has been taken before it accrued.

**29.11.2** In addition to the amount prescribed by 29.11.1 an annual leave loading of 17.5% shall be paid to an employee when proceeding on annual leave.

**29.11.3** The annual leave loading prescribed in this clause shall apply to proportionate payment of leave on termination of employment.

## **29.12 Proportionate leave on termination**

**29.12.1** If an employee:

**29.12.1(a)** after one month's continuous service in the first qualifying twelve monthly period with an employer, leaves the employment of the employer or his/her employment is terminated by the employer, or

**29.12.1(b)** after twelve months' continuous service with an employer, leaves the employment of the employer or his/her employment is terminated by the employer - the employee shall be paid a twelfth of his/her ordinary rate of wage at the same rate in respect of each completed month of continuous service, the service being service in respect of which leave has not been granted hereunder.

**29.13** Notwithstanding provisions elsewhere in the award the employer and the majority of employees, or an individual employee where there is mutual agreement, and following consultation with all employees, at an enterprise may agree to establish a system of single day annual leave absences, provided that:

**29.13.1** An employee may elect with the consent of the employer to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them; **29.13.2** Access to annual leave, as prescribed in 29.13. 1, shall be exclusive of any shutdown period provided for elsewhere under this award; and **29.13.3** An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

## **30. JURY SERVICE**

**30.1** An employee, other than a casual, required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages he/she would have received in respect of ordinary

time he/she would have worked had he not been on jury service.

**30.2** An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service. Further, the employee shall give his/her employer proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.

**31. LONG SERVICE LEAVE FOR REGISTERED MOTHERCRAFT NURSES EMPLOYED PRIOR TO 22 FEBRUARY 1995**

This provision shall apply only to registered Mothercraft Nurses employed as at 22 February 1995 by an employer respondent to this award. (All other employees shall be entitled to long service leave pursuant to the Victorian Long Service Act 1992.)

**31.1 Entitlement**

An employee shall be entitled to long service leave with pay, in respect of continuous service with one and the same employer, or service with Institutions or Statutory Bodies, in accordance with the provisions of this clause.

**31.1.1** An employee, who, as at 22 February 1995 has less than ten years service (as defined) shall accrue long service leave entitlements as follows:

**31.1.1(a)** All service up to 22 February 1995 shall accrue a long service leave entitlement of 1.733 weeks per year of service.

**31.1.1(b)** Long service leave shall accrue at the rate set out in the Victorian Long Service Leave Act 1992 for all service on and after 22 February 1995.

**31.1.2** An employee with ten years' service or more (as defined) shall accrue long service leave entitlements as follows:

**31.1.2(a)** On the completion by the employee of fifteen years continuous service six months' long service leave and thereafter an additional two months' long service leave on the completion of each additional five years' service.

**31.1.2(b)** In addition, in the case of an employee who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the employee, an amount of long service leave equal to one-thirtieth of the period of his/her service since the last accrual of entitlement to long service leave under 31.1.2(a).

**31.1.2(c)** In the case of an employee who has completed at least ten years' service, but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals onethirtieth of the period of service.

**31.2 Service entitling to leave**

**31.2.1** Subject to this subclause the service of an employee of an Institution or Statutory Body shall include service for which long service leave, or payment in lieu, has not been received in one or more Institutions including Statutory Bodies directly associated with such Institutions or Institution for the periods required by 31.1.

**31.2.2** Subject to this subclause, service shall also include all periods during which an employee was serving in Her Majesty's Forces or was made available by the employer for National Duty.

**31.2.3** When calculating the aggregate of service entitling to leave any period of employment with any one of the said Institutions or Statutory Bodies of less than six months duration shall be disregarded.

**31.2.4** When a business is transmitted from one employer the transmittor to another employer the transmittee, an employee who worked with the transmittor and who continues in the service of the transmittee, shall be entitled to count his/her service with the transmittor as service with the transmittee for the purposes of this clause.

**31.2.5** For the purposes of this clause, service shall be deemed to be continuous notwithstanding:

**31.2.5(a)** the taking of any annual leave or long service leave;

**31.2.3(b)** any absence from work of not more than fourteen days in any year on account of illness or injury, or if applicable, such longer period as provided in clause 33 - Personal carer's leave;

**31.2.3(c)** any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;

**31.2.3(d)** any absence on account of injury arising out of or in the course of the employment of the employee for a period during which payment is made under clause 37 Accident pay;

**31.2.3(e)** any leave of absence of the employee where the absence is authorised in advance in writing by the employer to be counted as service;

**31.2.3(f)** any interruption arising directly or indirectly from an industrial dispute;

**31.2.3(g)** any period of absence from employment between the engagement with one of the said Institutions or Statutory Bodies and another, provided it is less than the employee's allowable period of absence from employment. An employee's allowable period of absence from employment shall be five weeks in addition to the total period of paid annual and/or sick leave which the employee actually receives on termination or for which he/she is paid in lieu;

**31.2.5(h)** the dismissal of an employee if the employee is re-deployed within a period not exceeding two months from the date of such dismissal;

**31.2.5(i)** any absence from work of a female employee for a period not exceeding twelve months in respect of any pregnancy;

**31.2.5(j)** any other absence of an employee by leave of the employer, or on account of injury arising out of or in the course of his employment not covered by 31.2.5(d).

**31.2.6** In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in 31.2.5(a) to 31.2.5(e) shall be counted as part of the period of his/her service, but any interruption or absence of a kind mentioned in 31.2.5(f) to 31.2.5(j) shall not be counted as part of the period of service unless it is so authorised in writing by the employer.

**31.2.7** The onus of proving a sufficient aggregate of service to support a claim for any long service leave entitlement shall at all times rest upon the employee concerned. A certificate in the following form shall constitute acceptable proof.

Certificate of Service

..... (Name of Institution) (Date) .....

This is to certify that ..... (Name of Employee)  
has been employed by this institution/society/board for a period of .....  
years, months, etc.) from (dates).....

Specify hereunder full details of Long Service Leave granted during service or on termination.

.....

Signed ..... Stamp of Institution.

**31.2.8** Every employer shall keep or cause to be kept a long service leave record for each employee, containing particulars of service, leave taken and payments made.

**31.3** Payment in lieu of long service on the death of an employee

Where an employee who has completed at least ten years" service dies while still in the employment of the employer, the employer shall pay to such employee's personal representative a sum equal to the pay of such employee for 1/30th of the period of the employee's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the employee.

**31.4** Payment for period of leave

**31.4.1** Payment to an employee in respect of long service leave shall be made in one of the following ways:

- 31.4.1(a)** in full in advance when the employee commences his/her leave, or
- 31.4.1(b)** at the same time as payment would have been made if the employee had remained on duty; in which case payment shall, if the employee in writing so requires, be made by cheque posted to a specified address; or
- 31.4.1(c)** in any other way agreed between the employer and the employee.

**31.4.2** Where the employment of an employee is for any reason terminated before he/she takes any long service leave to which he/she is entitled or where any long service leave accrued to an employee pursuant to 31.3, the employee shall be entitled to pay in respect of such leave as at the date of termination of employment.

**31.4.3** Where an increase occurs in the ordinary time rate of pay during any period of long

service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

### **31.5** Taking of leave

**31.5.1** When an employee becomes entitled to long service leave, such leave shall be granted by the employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such date as is mutually agreed, or in default of agreement as is determined by the Australian Industrial Relations Commission provided that no such months determination shall require such leave to commence before the expiry of six months from the date of such determination.

**31.5.2** Any long service leave shall be inclusive of any public holiday occurring during the period when the leave is taken.

**31.5.3** If the employer and an employee so agree:

**31.5.3(a)** the first six months long service leave to which an employee becomes entitled under this award may be taken in two or three separate periods; and

**31.5.3(b)** any subsequent period of long service leave to which the employee becomes entitled may be taken in two separate periods; but save as aforesaid long service leave shall be taken in one period.

**31.5.4** An employer may by agreement with an employee grant long service leave to the employee before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten years service.

**31.5.4(a)** Where the employment of an employee who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the employer may, from whatever remuneration is payable to the worker upon termination, deduct and withhold an amount equivalent to the amount paid to the employee in respect of the leave in advance.

### **31.6** Definitions

For the purpose of this clause the following definitions apply:

**31.6.1** Pay means remuneration for an employees normal weekly hours of work calculated at the employee's ordinary time rate of pay provided in clause 16 - Wage rates at the time the leave is taken or (if he/she dies before the completion of leave so taken) as at the time of his/her death, and shall include the amount of any increase to the employee's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates provided that where accommodation is made available to any employee during his/her period of leave and where a deduction is made for the rental thereof pursuant to clause 9 - Facilitative provisions, such amount shall be deducted from the pay for the period of leave.

**31.6.2** Month shall mean a calendar month.

**31.6.3** Institution shall mean any hospital or benevolent home, community health centre, Society or Association registered and subsidised pursuant to the Hospital and

Charities Act 1958 or the Cancer institute constituted under the Cancer Act 1958, or the Fairfield Hospital Board or the Victorian Bush Nursing Association (Inc.) or a Bush Nursing Institution.

**31.6.4** Statutory Body means the Hospital and Charities Commission (Vic.), The Health Commission of Victoria and/or the Victorian Nursing Council.

**31.6.5** Transmission includes transfer, conveyance, assignment or succession whether by accident or by operation of law and "transmitted" has a corresponding interpretation.

## **32. PARENTAL LEAVE**

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

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

### **32.1 Definitions**

**32.1.1** For the purpose of this clause child means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

**32.1.2** Subject to clause 32.1.3, in this clause, spouse includes a de facto or former spouse.

**32.1.3** In relation to clause 32.5, spouse includes a de facto spouse but does not include a former spouse.

### **32.2 Basic entitlement**

**32.2.1** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption. **32.2.2** Subject to 32.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

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

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

### **32.3 Maternity leave**

**32.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

**32.3.1(a)** of the expected date of confinement (included in a certificate from a registered

medical practitioner stating that the employee is pregnant) at least ten weeks;

**32.11(b)** of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

**32.3.2** When the employee gives notice under 32.3. 1 (a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

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

**32.3.4** Subject to clause 32.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

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

**32.3.6** Special maternity leave

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

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

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

**32.3.7** Where leave is granted under clause 32.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

**32.4** Paternity leave

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

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

- 32.4.1(b)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- 32.4.1(c)** a statutory declaration stating:
- 32.4.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;
- 32.4.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and
- 32.4.1(c)(iii)** that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- 32.4.2** The employee will not be in breach of clause 32.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.
- 32.5** Adoption leave
- 32.5.1** The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 32.5.2** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
- 32.5.2(a)** the employee is seeking adoption leave to become the primary caregiver of the child;
- 32.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
- 32.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 32.5.3** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 32.5.4** Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- 32.5.5** An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 32.5.6** An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the

unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

### **32.6** Variation of period of parental leave

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

### **32.7** Parental leave and other entitlements

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

### **32.8** Transfer to a safe job

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

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

### **32.9** Returning to work after a period of parental leave

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

**32.9.2** An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 32.8, the employee will be entitled to return to the position they held immediately before such transfer.

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

### **32.10** Replacement employees

**32.10.1** A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave. **32.10.2** Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

## **33. PERSONAL/CARER'S LEAVE**

### **33.1** Amount of paid personal/carer's leave

An employee, other than a casual employee, is entitled to the following amount of paid personal/carer's leave:

- 33.1.1** during the first year of service, 7.6 hours for each month of service up to 91.2 hours of sick leave, and 22.8 hours of compassionate leave on each occasion;
- 33.1.2** during the second, third and fourth years of service, 106.4 hours of sick leave in each year and 22.8 hours of compassionate leave on each occasion;
- 33.1.3** 159.6 hours of sick leave and 22.8 hours of compassionate leave on each occasion in the fifth and subsequent years of service.

### **33.2** Immediate family or household

The entitlement to use bereavement leave/compassionate leave and carer's leave in accordance with this clause is subject to:

**33.2.1** the person being either:

- 33.2.1(a)** a member of the employee's immediate family; or
- 33.2.1(b)** a member of the employee's household.

**33.2.2** the term immediate family including:

- 33.2.2(a)** a spouse (including a former spouse), a de facto spouse and a former de facto spouse of the employee. A de facto spouse, in relation to a person means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- 33.2.2(b)** a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, parent in law, grandparent, grandchild or sibling of the employee or spouse of the employee.

### **33.3** Personal sick leave

**33.3.1** An employee, other than a casual employee, is entitled to the following amount of paid leave for absence due to personal illness or injury:

- 33.3.1(a)** during the first year of service 7.6 hours for each month of service up to 91.2 hours;
- 33.3.1(b)** during the second, third and fourth years of service up to 106.4 hours in each year; and
- 33.3.1(c)** up to 159.6 hours in the fifth and subsequent years of service.

**33.3.2** An employee may be absent through sickness for one day without furnishing evidence of such sickness on not more than three occasions in any one year of service.

**33.3.3** No employer shall terminate the services of an employee during the currency of any period of sick leave with the object of avoiding his obligations under this clause .

**33.3.4** Where the "one day" absences referred to in the proviso in 33.3.2 are not taken for a period of five years, an additional 38 hours sick leave shall be added to the employees accrued entitlement.

**33.3.5** Where an employee is absent due to personal illness or injury he or she, in order to be eligible for the payment of sick leave, shall notify the employer, where practicable, of such absence, the nature of the illness and the expected duration of the absence either prior to, or within a reasonable interval of, their normal commencement time.

**33.3.6** Provided that if it is not practicable to inform the employer as prescribed payment for sick leave shall not be withheld until all reasonable steps have been taken to enable an employee the opportunity to give reason why notification was not given.

**33.3.7** All employees are to be afforded an opportunity for such notification and be informed of the procedure to notify of an absence as provided in this subclause.

**33.3.8** Leave taken by an employee under 33.3.1 is deducted from the amount of personal/carer's leave under 33.1.

**33.3.9** An employee is entitled to use accumulated sick leave for personal sickness if the employee has already used:

**33.19(a)** the current year's sick leave component of the personal/carer's leave entitlement as personal sick leave; or

**33.19(b)** the current year's aggregated personal/carer's leave entitlement.

**33.3.10** Sick leave entitlements which are untaken at the completion of this year shall accumulate on the following scale:

**33.3.10(a)** The balance of personal/carer's leave provided that such remaining leave does not exceed the quantum of sick leave specified below less any personal sick leave or carer's leave taken by the employee during the year:

**33.3.10(a)(i)** during the first year of service 7.6 hours for each month of service up to 91.2 hours;

**33.3.10(a)(ii)** during the second, third and fourth years of service, 106.4 hours in each year; and

**33.3.10(a)(iii)** 159.6 hours in the fifth and subsequent years of service.

### **33.4** Infectious disease leave

**33.4.1** Employees who contract, or believe they have contracted, one of the infectious diseases listed in this clause must as soon as possible notify the employer of this.

**33.4.2** Employees who contract an infectious disease through a contact in the area of employment shall be entitled to infectious diseases leave in accordance with the following scale:

<b>Disease</b>	<b>Leave with pay</b>
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Chicken Pox (Varicella)	5 Working days
German Measles (Rubella)	5 Working days
Hepatitis	as decided by medical practitioner
Influenza	5 Working days
Measles (Morbilli)	10 Working days
Mumps	10 Working days
Rheumatic Fever	as decided by medical practitioner
Scarlet Fever	10 Working days
Whooping Cough	10 Working days

**33.4.3** A duly signed certificate by a qualified medical practitioner must accompany any application for leave with pay under the provisions of this subclause. In cases where employees contract influenza, the medical certificate must state the word "influenza" in full, and that the pathology result is present.

### **33.5** Bereavement/compassionate leave

**33.5.1** An employee, other than a casual employee, is entitled to three ordinary days paid leave on each occasion if a member of the employee's immediate family or household in Australia dies or is seriously ill;

**33.5.2** on the death or serious illness within Australia of a wife, husband, father, mother, brother, sister, child, step-child, mother-in-law or father-in-law, grand-parent, grand-child or next of kin;

**33.5.3** on the death only outside Australia of a wife, husband, mother, father, sister, brother, child, or next of kin;

**33.5.3(a)** to leave without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary days' work.

**33.5.3(b)** Provided that this clause shall have no effect while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

**33.5.3(c)** For the purpose of this clause the words wife and husband shall include a person who lives with the employee as a de facto wife or husband.

**33.5.4** Proof of death or in the case of serious illness, dependence for care of such relation, shall be provided to the satisfaction of the employer if requested.

### **33.6** Carer's leave

**33.6.1** An employee, other than a casual employee, with responsibilities in relation to either members of their immediate family or household who need their care and support, is entitled to use up to five days per annum of their personal/carer's leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

**33.6.2** The entitlement to use personal/carer's leave is subject to the employee being responsible for the care of the person concerned.

**33.6.3** The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the

illness is such as to require care by another.

- 33.6.4** In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- 33.6.5** The employee must where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of absence.
- 33.6.6** Each day or part of a day of carer's leave taken in accordance with 33.6 is to be deducted from the amount of personal/carer's leave provided in 33.1 of this clause up to a maximum of five days per annum.
- 33.6.7** An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal/carer's leave entitlement. An exception to this is where an employee has already taken five days carer's leave in the current year.

**33.7** Unpaid carer's leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

**34. PUBLIC HOLIDAYS**

**34.1** An employee shall be entitled to holidays on the following days:

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

**34.1.2** the following days, as prescribed in the relevant States, Territories and localities - Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and

**34.1.3** Melbourne Cup Day, or in lieu of Melbourne Cup Day, some other day as determined for a particular locality.

**34.2** When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

**34.2.1** When Boxing Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 28 December.

**34.2.2** When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

**34.3** Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 34.2 above, those days shall constitute additional holidays for the purpose of this award.

- 34.4** An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.
- 34.4.1** An agreement pursuant to 34.4 shall be recorded in writing and be available to every affected employee. Should employees so desire, a union representative, or other nominated representative, may be called to represent employees throughout the process.
- 34.5** The above holidays shall be paid for if such holiday falls during the annual leave period and the employee would normally have been rostered to work on that day.
- 34.6** Where a full-time or part-time employee who usually works on a day of the week on which a public holiday falls in the relevant area is not required to work on that day such employee shall be paid at the ordinary hourly rate for the hours he or she would have normally worked on that day.
- 34.7** When a full-time or part-time employee is absent from his or her employment on his or her normal working day immediately before or after a public holiday in the relevant area without reasonable excuse, that employee shall not be paid for such holiday.

## **PART 8 - TRAINING AND RELATED MATTERS**

### **35. RELATIONSHIP TO NATIONAL TRAINING WAGE**

A party to this award shall comply with the terms of the National Training Wage Award 1994, as varied, as though bound by clause 3 of that award provided that for a period of twelve months only from the date of this order trainees may be appointed at Skill Level B. In addition, parties shall comply with the Traineeship Approvals Guidelines as outlined in clause 36.

## **36. TRAINEESHIP APPROVAL GUIDELINES**

An Approvals Committee shall be established to vet all applications. It shall comprise an employer representative of Careskills, a union representative of Careskills, a representative of the State ITAB and a representative of the Executive of Careskills.

- 36.1** A trainee must not displace any existing employee as per objective 5 of the National Training Wage Award 1994.
- 36.2** Each organisation must have a suitably qualified employee (as listed below) to supervise the trainee during the core hours of the centre's operations as prescribed by the Children's Services Centres Regulations 1998 (Victoria).
- Diploma Community Services (Child Care)
  - Associate Diploma of Social Science (Child Care)
  - Registered Mothercraft Nurse,
  - Mothercraft Nurse or Pre School Mothercraft Nurse with Certificate of Applied Science (Child Care Studies) or Advanced Certificate Applied Sciences (Child Care Studies)
  - N.N.E.B.
  - Diploma of Teaching (Early Childhood)
  - Bachelor of Education (Early Childhood)
  - Diploma of Arts (Child Care Studies)
  - Associate Diploma Arts (Child Care Studies) Bachelor of Early Childhood Studies (Melb Uni Kew)
  - Equivalent or as approved pursuant to regulation 30 of the Children's Services Centres Regulations 1998 (Vic)
- 36.3** During periods when the supervisor is absent, for example, sick leave, annual leave, rostered day off, a substitute supervisor should be nominated.
- 36.4** The maximum number of approved trainees in any centre will be eight based on the registered number of child care places as shown below.
- Centres up to 25 places up to 2 trainees
  - Centres up to 26 - 44 places up to 4 trainees
  - Centres up to 45 - 60 places up to 6 trainees
  - Centres with 60 or more places up to 8 trainees
- 36.5** Trainees will be employed for 38 hours per week of which up to two training days or other agreed block release will be allowed.
- 36.6** The employer must provide access to college staff for visits to the trainee (time of visits must be of mutual agreement). Visits may be up to three hours in duration which must include a 30 minute assessment period away from duties with children.
- 36.7** The training provider must be registered to provide training to the level of Diploma Community Services (Child Care) (Accredited Associate Diploma of Social Science (Child Care) and be part of the course moderation group and traineeship monitoring committee (as required).
- 36.8** The training provider must ensure that they will provide the training in accordance

with the curriculum guaranteeing a 50% credit transfer into the Diploma in Community Services (Child Care).

- 36.9** In Koorie Child Care organisations which are disadvantaged, an appropriate supervision model can be devised and arranged through the centre which ensures a high quality level of supervision of trainees. This model must be approved by the Approvals Committee.

## **PART 9 - ACCIDENT PAY**

### **37. ACCIDENT PAY**

- 37.1** Where an employee becomes entitled to weekly compensation payments pursuant to the Accident Compensation Act 1985 (the Act), the employer will pay to the employee an amount equivalent to the difference between;
- 37.1.1** the level of weekly compensation and any weekly wages earned or able to be earned if partially incapacitated, and
- 37.1.2** the amount that would have been payable under this award for the classification of work if the employee had been performing their normal duties, provided that such rate shall exclude additional remuneration by way of shift premiums overtime payments special rates or other similar payments.
- 37.2** Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.
- 37.3** Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.
- 37.4** Industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration shall not be subject to the accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.
- 37.5** The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury.
- 37.6** Where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to the Act, such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

B. This award shall come into force as from 1 October 1998 and shall remain in force for a period of six months.

BY THE COMMISSION: