



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.185—Approval of enterprise agreement

**Sunstate Foods Pty Ltd T/A Sunstate Foods Training and Red Rooster
Foods Suncoast**
(AG2009/23745)

SDA - SUNSTATE FOODS PTY LTD AND ITS STORE EMPLOYEES COLLECTIVE AGREEMENT 2009-2012

Fast food industry

SENIOR DEPUTY PRESIDENT

BRISBANE, 5 MARCH 2010

*Application for approval of the SDA - Sunstate Foods Pty Ltd and Its Store Employees
Collective Agreement 2009-2012.*

[1] An application pursuant to s.185 of the *Fair Work Act 2009* (“**the Act**”) was made on 22 December 2009 by Sunstate Foods Pty Ltd T/A Sunstate Foods Training and Red Rooster Foods Suncoast for the approval of a single enterprise agreement known as the SDA - Sunstate Foods Pty Ltd and Its Store Employees Collective Agreement 2009-2012 (“**the Agreement**”).

[2] The Agreement was made during the bridging period¹ as defined in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (“**the Transitional Act**”), accordingly, when considering whether to approve the Agreement I have taken into account the provisions of Part 2–4 of Chapter 2 of the Act as modified by Schedule 7 of the Transitional Act.

[3] On 25 February 2010 the Employer provided the following undertaking to Fair Work Australia:

“I, Carl Brooks being duly authorised give the undertaking that pursuant to Section 186 (6) (b) of the Fair Work Act 2009 and Clause 3.1 of the proposed SDA-Sunstate Foods Pty Ltd and Its Store Employees Collective Agreement 2009-2012 that an employee subject to such proposed Agreement has the right (and is recognised as having such a right) to representation under clause 3.1

In regard to Clause 2.1 of the proposed Agreement I also give a further undertaking that we agree (and will comply) with the prerequisites in section 203(2)(b)(i) and (ii) of the Act.”

¹ Item 2, Part 1, of Schedule 2.

[4] In light of the Employer's undertaking, I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[5] The Shop Distributive and Allied Employee Association, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act I note that the Agreement covers the organisation.

[6] The Agreement is approved and will operate in accordance with s.54 of the Act.

The image shows a handwritten signature in black ink to the left of a circular seal. The seal features the coat of arms of Australia, with a kangaroo on the left and an emu on the right, and the text 'THE SEAL OF FAIR WORK AUSTRALIA' around the perimeter.

SENIOR DEPUTY PRESIDENT

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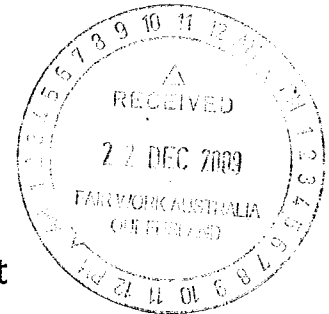
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23745

Fair Work Australia

Fair Work Act 2009

S185 Approval of Collective Agreement



**SDA – SUNSTATE FOODS PTY LTD
AND ITS
STORE EMPLOYEES
COLLECTIVE AGREEMENT 2009 – 2012**

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Subject Matter Clause No.

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1.2 Date of operation

This Agreement takes effect from 7 days after the date of Approval of Fair Work Australia (FWA) and for a period until the 1st December 2012 and until replaced or cancelled in accordance with the "Act."

1.3 Agreement Coverage

This Agreement applies to all employees as defined in clause 1.5, engaged in, or in connection with, the Quick Service Foods Operations of Sunstate Foods Pty Ltd, the "Employer".

1.4 Area of operation and application of Additional Standards

This Agreement applies to all stores owned and operated by the Employer. This Agreement is subject to the National Employment Standards (NES) (attached as Schedule A) and the comparable wage levels for corresponding classifications in the Modern Fast Food Award 2010 (the Award) as adjusted by FWA from time to time.

1.5 Definitions

1.5.1 "Act" means the *Fair Work Act 2009* as amended or replaced from time to time.

1.5.2 "Commission" means Fair Work Australia. (FWA).

1.5.3 "Employee Level 1" means an employee who can competently perform designated operations functions.

- 1.5.4 "Employee Level 2" means a senior employee who is proficient in all operations and functions and who is appointed in writing by the employer to assist and supervise employees at Level 1.
- 1.5.5 "Employee Level 3" means an employee who is proficient in all operations and functions and who is appointed in writing by the employer to the level of "Assistant Store Manager"
- 1.5.6 "Employee Level 4" means an Employee who is proficient in all operations and functions and who is appointed in writing by the Employer to the level of "Store Manager".
- 1.5.7 "Quick Service Foods" means and includes speciality branded take-away foods and proprietary items packaged, sold and served in such a manner as to allow their being taken from the point of distribution to be consumed elsewhere; should the customer so decide.
- 1.5.8 "Quick Service Food Operations" means the preparation and serving of Quick Service Foods in Outlets owned and/or operated by the Employer.
- 1.5.9 "Quick Service Foods Outlet" means an establishment or section thereof which is exclusively engaged in the preparation and/or serving of Quick Service Foods as defined above and shall include any company premises, whether within such establishment or otherwise, where such foods are prepared or partially prepared, which by custom and practice is open for 7 days of the week.
- 1.5.10 "Union" means the Shop, Distributive and Allied Employees Association (SDA).
- 1.5.11 "Employer" means Sunstate Foods Pty Ltd.

1.6 Parties bound

This Agreement is legally binding upon the employer and employees as prescribed by clause 1.3, and upon the SDA.

PART 2 – FLEXIBILITY

2.1 Individual Flexibility Clause

- 2.1 Notwithstanding any other provision of this Agreement, the Employer and an individual employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the Employer and the individual employee. The terms the Employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances; and
 - (e) leave loading.
- 2.2 The Employer and the individual employee must have genuinely made the agreement without coercion or duress.
- 2.3 The agreement between the Employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed in clause 2.1; and
 - (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.
- 2.4 The agreement between the Employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the Employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

- (b) state each term of this Agreement that the Employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the Employer and the individual employee;
 - (d) detail how the individual Agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 2.5 The Employer must give the individual employee a copy of the agreement within 14 days and keep the agreement as a time and wages record.
- 2.6 Except as provided in clause 2.4(a) the agreement must not require the approval or consent of a person other than the Employer and the individual employee.
- 2.7 The Employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the Employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 2.8 The agreement may be terminated:
- (a) by the Employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the Employer and the individual employee.
- 2.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an Employer and an individual employee contained in any other term of this Agreement.

2.10 Enterprise flexibility

- 2.10.1 As part of a process of improvement in productivity and efficiency, discussion should take place to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.10.2 The consultative processes established in accordance with clause 2.10.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.10. Union delegates at the place of work may be involved in such discussions.

PART 3 - COMMUNICATION CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedure

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

- 3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.

- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of the Union, be reported to the relevant officer of the Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.1.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.1.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act

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

4.1 Engagement

- 4.1.1 Every employee other than a casual employee shall be engaged on a permanent basis.
- 4.1.2 Every employee shall be advised at the time of engagement whether they are full-time, part-time (as defined in clause 4.7) or casual (as defined in clause 4.8).

4.2 Termination of employment

4.2.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.2.2 *Termination by employer*

(a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.

(c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

(e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.2.3 *Notice of termination by employee*

The notice of termination required to be given by weekly employees shall be one week.

If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.2.2(d) for a period of notice of one week.

4.2.4 Annual leave shall not be used to provide the notice prescribed in clauses 4.2.2 and 4.2.3.

4.2.5 *Time off during notice period*

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

4.3 Introduction of changes

4.3.1 *Employer's duty to notify*

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

(b) "Significant effects" includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.3.2 *Employer's duty to consult over change*

(a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).

(b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.3.1.

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

4.4 Redundancy

4.4.1 Consultation before terminations

- (a) Where the employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.4.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that the employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.4.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.4.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.2.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.4.3 Transmission of business (The "Act" applies in this situation)

4.4.4 Time off during notice period

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.4.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.4.5 Notice to Centrelink

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.4.1, the employer shall notify Centrelink if requested by the employee as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.4.6 Severance pay

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.2.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.4.1(a), shall be entitled to the following amounts of severance pay:

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

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

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

4.4.7 Superannuation benefits

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

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

4.4.8 Employee leaving during notice

An employee whose employment is terminated for reasons set out in clause 4.4.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

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

4.4.9 Alternative employment

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

4.4.10 *Employees with less than one year's service*

Clause 4.4 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.4.11 *Employees exempted*

Clause 4.4 shall not apply:

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

4.4.12 *Exemption where transmission of business*

- (a) The provisions of clause 4.4.6 are not applicable where a business is before or after the date of the insertion of this clause into the Agreement, transmitted from the employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.4.12(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.4.13 *Incapacity to pay*

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

4.5 Anti-discrimination

4.5.1 It is the intention of the parties to this Award to prevent and eliminate discrimination as defined by the Queensland *Anti-Discrimination Act 1991* and the *Fair Work Act 2009* as amended from time to time, which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

4.5.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.1, the parties to this Agreement must take reasonable steps to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

4.5.3 Under both Acts it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

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

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the Acts; or
- (b) an employee, the employer or SDA, pursuing matters of discrimination, including by application to the Australian Human Rights Commission/Anti-Discrimination Commission Queensland or the Office of the Workplace Ombudsman.

4.6 Mixed functions

4.6.1 Where any employee on any one day performs 2 or more classes of work to which a differential rate fixed by any Award is applicable, such employee if employed for more than 4 hours on the class or classes of work carrying a higher rate shall be paid in respect of the whole time during which they work on that day at the same rate, which shall be at the highest rate fixed by such Award in respect of any of such classes of work, and if employed for 4 hours or less on the class or classes of work carrying a higher rate shall be paid at such highest rate for 4 hours. This shall not apply to Assistant Managers acting as Store Managers unless the higher duties are performed for 5 consecutive days or more.

4.7 Part-time employees

4.7.1 Part-time employees shall be paid at the rate of 1/38th of the weekly rate as from the date of commencement of this Agreement.

4.7.2 The employer may employ part-time employees as auxiliary to full-time employees in any classification in this Agreement.

4.7.3 A part-time employee is one who works not less than 10 hours per week and not more than 32 hours over not more than 5 days per week, provided that the foregoing may be amended so that part-time employees may be rostered for up to a maximum of 37 hours per week or 148 hours per 4 week cycle, to meet seasonal demands during December, January and over the School holidays, or other periods agreed in writing with the SDA.

4.7.4 At the time of first being employed, the employer will advise the part-time employee of the anticipated pattern of work specifying at least:

- (a) the hours worked each day, to a maximum of 10 hours;
- (b) amendment must be in writing, subject to clause 6.2;
- (c) minimum daily payment is 2 hours;
- (d) all time worked in excess of the agreed hours is paid at the overtime rate, except when the maximum hours are amended as described in clause 4.7.2; and
- (e) the times of taking and the duration of meal breaks, subject to clause 6.3.

4.7.5 An employer is required to roster a part-time employee for consecutive hours on each shift.

4.7.6 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 4.8.

4.7.7 A part-time employee employed under the provisions of clause 4.7 must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed in accordance with clause 4.7.1 above.

4.7.8 A part-time employee shall be entitled to payments in respect of annual leave, sick leave, long service leave, bereavement leave and public holidays as mentioned in Part 7 of this Agreement on a *pro-rata* basis.

4.7.9 No full-time or casual employee shall be transferred by an employer to part-time employment without the written consent of the employee:

Provided that where such transfer occurs, all leave entitlements accrued shall be deemed to be continuous. A full-time employee who requests part-time work and is given such work may revert to full-time employment on a specified future date by agreement with the employer, recorded in writing.

4.8 Casual employees

4.8.1 A casual employee means an employee who is engaged and paid by the hour.

4.8.2 The rate of pay for casual employees shall be 1/38th of the appropriate full-time rate prescribed in clause 5.2 per hour for employees. The calculations resulting from clause 4.8.2 will be subject to the appropriate respective loadings, as prescribed by clause 4.8.3.

4.8.3 The following loadings are payable separately and do not compound:

- (a) 23% for all ordinary hours worked
- (b) 73% where the rate of pay is prescribed as time and a-half
- (c) 123% where the rate of pay is prescribed as double time
- (d) 173% where the rate of pay is prescribed as double time and a-half

Note (1): in accordance with the "Transitional Decision" of Fair Work Australia dated 2 September 2009 the 23% Casual Loading will increase by 0.4% increments from 1 July 2010 during the life of this Agreement (maximum loading is 25% by 1 July 2014).

Note (2): the loadings in (b) to (d) above shall also increase corresponding to the increases arising out of Note (1).

4.8.4 The minimum period of engagement of a casual employee shall be 2 hours.

4.9 Trainees

The provisions of the Modern National Training Wage Award – 2010 (or any equivalent Modern Award) apply to and are deemed to form part of this Agreement.

4.10 Incidental and peripheral tasks

4.10.1 Employees are to be available to perform a wider range of duties, including work which is incidental or peripheral to their main tasks or functions.

4.10.2 The assignment of incidental or peripheral tasks to an employee or a class of employees shall:

- (a) be consistent with the efficient performance of the employee's main tasks or functions;
- (b) be subject to the employee having the skills or competence to perform the initial tasks.

4.11 Continuity of service - transfer of calling

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

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 The Wage Rates in this Agreement shall apply from 1 December 2009 and shall be subject to Minimum Wage adjustments in full as awarded by Fair Work Australia from 1 July in each year.

5.2 Wages

5.2.1 The minimum weekly rate of wages for adult employees shall be as follows

Classification	Wages per week \$
Employee Level 1	575.00
Employee Level 2	612.60
Employee Level 3	623.00
Employee Level 4	631.00

The above rates will be subject to the following adjustments:-

All Levels: 1,7,2010; Wage increase of \$5.00 per week plus (Minimum Wage increase or \$12.00 per week whichever is the higher)

All Levels: 1,7,2011; Wage increase of \$5.00 per week plus (Minimum Wage increase or \$12.00 per week whichever is the higher)

All Levels: 1,7,2012; Wage increase of \$5.00 per week plus (Minimum Wage increase or \$12.00 per week whichever is the higher)

5.2.2 *Juniors* - The minimum rates of wages payable to junior employees will be calculated using the following percentages:

Years of Age	Percentage of the Applicable Adult Rate as Appropriate		
	From 01/12/2009 %	From 01/07/2010 %	From 01/07/2011 %
Under 17 years of age	54.5	53.5	52.5
17 years and under 18 years	64.5	63.5	62.5
18 years and under 19 years	74.5	73.5	72.5
19 years and under 20 years	84.5	83.5	82.5

And thereafter at the appropriate rate prescribed for adults for the class of work being performed..

5.2.3 Junior rates shall be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple.

5.2.4 No employees who, prior to the coming into force of this Agreement, were in receipt of wages and/or enjoyed conditions superior in any respect to the wages and/or conditions prescribed by this Award shall have their wages and/or conditions reduced merely through the coming into force of this Award.

5.3 Payment of wages

5.3.1 All employees covered by this Award shall be paid on the same day every week, within 3 days of the completion of the week's work. Where an engagement is terminated in accordance with clause 4.2.2, all wages and overtime shall be paid to the employee 'no later 48 hours.'

Provided that where an employee terminates their services without giving the period of notice required by clause 4.2.3, or where an employee is summarily dismissed on a weekend or public holiday, such employee's wages shall be made available not later than 48 hours.

5.3.2 Wages shall be paid in full, by EFT or subject to the agreement with the employer in Cash.

5.3.3 Notwithstanding clauses 5.3.1, 5.3.2 and 5.3.3, the provisions of clause 5.3 may be amended by agreement in writing between the employer, the employee and their respective Union.

5.4 Occupational Superannuation

5.4.1 For each eligible employee (as defined), the employer will contribute a sum calculated on an employee's ordinary time earnings (as defined) in accordance with the provision of the *Superannuation Guarantee Administration Act - 1992*. This sum is to be paid to an approved superannuation scheme, retrospective to the date of the employee's appointment.

5.4.2 Contributions will be made into one of the following Funds

(a) Retail Employees Superannuation Trust; or

(b) Sunsuper.

5.4.3 "Eligible employee" means any employee who earns \$450.00 or more in any month. Such employee shall only be deemed to be an eligible employee in those months where the minimum earning requirement is met:

Provided that a part-time or casual employee under the age of 18 years shall not be deemed to be an eligible employee in any week in which the employee works less than 30 hours.

5.4.4 "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

5.5 Laundry allowance

5.5.1 Where an employer does not launder a uniform or clothing which is provided, then the employer shall pay in lieu thereof an allowance of \$2.25 per week, in the case of full-time employees, and 45 cents per day in the case of casual or part-time employees.

5.6 Transport

5.6.1 Transport

When the employer requires an employee to work until it is too late to travel home by the employee's normal method of transport home the employer must pay the cost of transport for the employee to get home free of charge. Clause 5.6.1 does not apply where the employer provides accommodation for the employee for the night free of charge.

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

6.1 Hours of work

6.1.1 The ordinary hours of work excluding meal breaks shall be an average of 38 hours per week for all employees to be worked as follows:

- (a) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (b) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (c) 152 hours within a work cycle not exceeding 28 consecutive days; or
- (d) a combination of any of the above in any one establishment.

6.1.2 (a) The 38 hour week shall be implemented on one of the following bases:

- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working 8 ordinary hours on one or more days each work cycle and by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iii) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.
- (b) The method of rostering the 38 hour week shall be agreed between the employer and the employees concerned subject to the particular needs of the establishment.
- (c) Ordinary hours are to be worked within a minimum of 4 hours and a maximum of 10 hours per day and shall be exclusive of meal breaks subject to clause 6.3.
- (d) An employee shall not be rostered for work on more than 4 consecutive days of 10 hours without a break of at least 48 hours.
- (e) No employee shall be rostered to work for more than 10 successive days without a day off.

6.1.3 *Banking of rostered days off* - Where an employee's hours are worked in accordance with clause 6.1.2(a)(iii), any banked rostered days off shall be taken within 12 calendar months from the date on which the first rostered day off was accrued.

6.1.4 No employee under the age of 18 years shall work, or be permitted to work, later than 8.00 p.m. without the consent of the employee's parents or legal guardians.

6.2 Rosters

6.2.1 The ordinary working hours of all employees shall be worked in accordance with a weekly roster which shall not be changed except upon 7 days notice.

6.2.2 Rosters may be altered in cases of sickness, absenteeism, or where the employer and the employees concerned mutually agree.

6.2.3 A copy of the roster shall be posted in a conspicuous place on the employer's premises.

6.3 Meals and meal breaks

6.3.1 No employee shall be required or permitted to work for more than 5.5 hours continuously (excluding rest pauses) without an unpaid meal break of not less than 30 minutes nor more than one hour:

Provided that such meal break shall be given and taken not earlier than after the completion of 2 hours' work and before the commencement of the seventh hour.

6.3.2 Where an employee is required to work through their usual meal break, that employee shall be paid for all time so worked at double time and such double time shall continue to be paid until the employee ceases work for the day or is allowed an unpaid meal break of at least 30 minutes' duration.

6.3.3 Any employee who is required to work overtime for more than one hour beyond their rostered ceasing time shall be provided with an adequate meal by the employer, or, in the event of the employer being unable to provide such meal, be paid an allowance of \$9.60 in lieu thereof.

6.4 Rest pauses

6.4.1 *Full-time employees* - Full-time employees shall receive a rest pause of 10 minutes' duration in the first half and the second half of each day worked.

6.4.2 *Part-time and casual employees* - Part-time and casual employees who work a minimum of 4 consecutive ordinary hours, but less than 7.6 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 7.6 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

6.4.3 Rest pauses shall be taken in the employer's time.

6.4.4 Rest pauses shall be taken at such times and in such a manner to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity is necessary.

6.4.5 Notwithstanding the provisions of clause 6.4.1, where the employer and employees agree, the rest pauses may be combined so that employees have one rest pause of 20 minutes' duration.

6.5 Penalty rates

6.5.1 *Weekend penalty* - All ordinary time worked by full-time employees on a Saturday or Sunday shall be paid for at the rate of time and a-quarter:

6.5.2 *Late work penalty* - For all ordinary time worked by full-time and part-time employees on Monday to Friday inclusive between 11.00 p.m. and 12.30 a.m., employees shall be paid an additional \$1.249 per hour.

6.5.3 All ordinary time worked by an employee between 12.30 a.m. and 5.00 a.m. Monday to Friday inclusive shall attract an additional payment at the rate of \$2.156 per hour for any hour or part thereof for any time worked within the said hours.

6.6 Overtime

6.6.1 Except as hereinafter provided, all time worked outside or in excess of the ordinary hours prescribed in clause 6.1 shall be deemed to be overtime and shall be paid for at the rate of time and a-half:

Provided that employees shall be paid at the rate of double time for all overtime worked in excess of 3 hours in any one day.

6.6.2 All time worked on an employee's rostered day(s) off shall be paid for as prescribed in clause 6.6.1 with a minimum payment of 2 hours' work per occasion.

6.6.3 An employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times shall, subject to clause 6.6.4, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instructions of the employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until released from duty for such period and the employee shall then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

6.6.4 The provisions of clause 6.6.3 shall apply in the case of employees who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

- (a) for the purpose of changing rosters; or
- (b) where an employee does not report for duty; or
- (c) where a roster is worked by arrangement between the employees themselves.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

Is subject to Schedule A with the addition of the following.

7.1.1 Part-time employees shall be entitled to *pro rata* annual leave based upon the number of hours worked

7.1.2 *Calculation of annual leave pay* - Annual leave pay (including any proportionate payments) shall be calculated as follows:

(a) Subject to the provisions of clause 7.1.2(b), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:

- (i) the employee's ordinary wage rate as prescribed by clause 5.2 for the period of the annual leave (excluding weekend penalty rates);
- (ii) a further amount calculated at the rate of 17.5% of the amount referred to in clause 7.1.2(a)(i).

(b) Clause 7.1.2(a) shall not apply to:

- (i) any period or periods of annual leave exceeding 152 hours; or
- (ii) employers (and their employees) who are already paying (or receiving) an annual leave bonus loading or other annual leave payment which is not less favourable to employees.

7.2 Personal/Carer's Leave

Personal/Carer's leave is subject to Schedule A with the addition of the following:

7.2.1 Payment for sick leave will be made based on the number of hours which would have been worked if the employee were not absent on sick leave.

7.2.2 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence, about the nature and approximate duration of the illness.

7.2.3 Accumulated sick leave

An employee's accumulated sick leave entitlements are preserved when:

- (a) The employee is absent from work on unpaid leave granted by the employer;
- (b) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.4 Workers' compensation

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

7.3 Long service leave

All employees covered by this Award shall be entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Queensland Industrial Relations Act 1999 as amended from time to time.

7.4 Compassionate Leave

Compassionate Leave is subject to Schedule A with the addition of the following:

7.4.1 Entitlement where death of certain family members occurs outside Australia

An employee shall be entitled to a maximum of 2 days' leave without loss of pay on each occasion and on the production of satisfactory evidence of the death outside Australia of an employee's spouse, father or mother, and where such employee travels outside of Australia to attend the funeral.

7.5 Parental Leave

Parental Leave is subject to Schedule A.

7.6 Public holidays

7.6.1 The following days are public holidays under this Agreement:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- Labour Day;
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or

any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday and any day declared by the Minister in accordance with the *Holidays Act 1983* to be a special holiday, either throughout the State or within a specified District.

7.6.2 *Annual show*

Any day appointed under the *Holidays Act 1983* from time to time by the Minister by notification published in the *Industrial Gazette* as the day to be kept as a holiday in a particular district in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification for such district:

Provided that in a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

7.6.3 *Payment in certain circumstances for public holidays not worked*

An employee, other than a casual, who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day irrespective of the fact that the employee may not be required to work on such day.

7.6.4 *Payment for time worked on public holidays or substituted holidays*

All work done by any employee on any of the holidays or substituted holidays mentioned in clause 7.6.1 shall be paid for at the rate of double time and a-half with a minimum of 3 hours but so that the employee is not entitled to be paid at public holiday rates for both the holiday and the substituted day.

7.6.5 *Double time and a-half*

For the purposes of clause 7.6.4, "double time and a-half" means 2.5 times the normal hourly rate for full time employees and for casual employees, their hourly rate plus 1 and ½ times the full time equivalent rate

7.6.6 *Substitution*

Notwithstanding the provisions of clause 7.6, the employer and the majority of employees concerned, may agree to substitute the public holidays in clause 7.6.1 with another day and all work performed on the substituted day shall be deemed to be work performed on the public holiday and paid in accordance with clause 7.6.4 but so that an employee is not entitled to receive public holiday benefits for both days.

7.6.7 *Payment when a day is substituted for a public holiday falling on Saturday or Sunday*

When a public holiday which would otherwise have fallen on a Saturday or a Sunday is substituted for a day appointed to be kept in its place, employees other than casuals required to work on the Saturday or the Sunday shall be paid at the ordinary Saturday or Sunday rate, except that when 25 December falls on a Saturday or a Sunday such employees shall receive in addition a loading of one half of an ordinary day's wages.

7.6.8 *Employee Stand Down*

Any and every employee who, having been dismissed or stood down by the employee's employer during the month of December in any year, and re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall have been employed by that employer for a continuous period of 2 weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by the employee's employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely Christmas Day, Boxing Day and the 1st day of January occurring during the period on and from the date of the employee's dismissal or standing down to and including the date of the employee's re-employment as aforesaid.

7.6.9 *Employees, other than casuals, who are not Monday to Friday workers*

In the case of employees who do not ordinarily work Monday to Friday of each week, they shall be entitled to public holidays as follows:

- (a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day's leave.

- (b) A part-time employee shall be entitled to either payment for each of the public holidays or a substituted day's leave provided that the part-time employee would have been ordinarily rostered to work on that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.
- (d) A part-time employee who works an average five days per week, but whose roster is not a regular Monday to Friday roster, will not be disadvantaged by the fact that a prescribed holiday falls upon a day when the employee would not be working. The appropriate compensation is:
 - an alternative day off; or
 - an addition of one day to annual leave; or
 - an additional day's wages.

For the purposes of clause 7.6.9, "day off" means the average number of hours rostered per day in the four week cycle prior to the public holiday.

7.7 Blood donor leave

- 7.7.1 A full-time or part-time employee who is absent during ordinary working hours for the purpose of donating blood, will not suffer any deduction of pay, including any allowances and penalty payments the employee would have received had they been at work, up to a maximum of 2 hours on each occasion and subject to a maximum of 4 separate absences each calendar year.
- 7.7.2 An employee must attempt to donate blood outside working time. If that is not possible, the employee must arrange for such leave to be taken on a day suitable to the Manager and be as close as possible to the beginning or end of the ordinary working hours.
- 7.7.3 The employee must first provide proof of attendance, and of the duration, to the satisfaction of the Manager.
- 7.7.4 The employee must notify their Manager as soon as possible, of the date and time upon which they are requesting to take such leave.

7.9 Jury service (Schedule A does not apply)

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

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

8.1 Fares

- 8.1.1 When an employee is required to travel anywhere on the business of the employer in the course of the employee's employment, all fares so incurred shall be paid by the employer.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

- 9.1.1 The parties acknowledge that various degrees of training are provided to employees in the industry, both by internal on the job training and through external training providers.
- 9.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in such cases where this is required.
- 9.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in this industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits from such training.
- 9.1.4 The parties agree to continue discussions on issues raised in relation to training.
- 9.1.5 The parties are committed to encouraging young people to view this industry as one which has the capacity to provide them with an interesting career.

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

10.1 Uniforms

- 10.1.1 Where employees are required to wear a uniform or any other distinctive type of clothing; such uniform or clothing shall be supplied, maintained and laundered at the employer's expense and shall be the property of such employer and shall be returned to the employer upon termination of employment in good order or condition, subject to fair wear and tear.
- 10.1.2 Upon commencement of an employee the employer may withhold \$20.00 per uniform from any money owing to that employee:

Provided that in circumstances where such a deposit would impose undue hardship on the employee, alternative arrangements may be made by agreement between the employer and the employee. Such amount will be refunded to the employee on termination and the return of uniforms.

- 10.1.3 Full-time employees shall be issued with a minimum of 3 uniforms and casual and part-time employees shall be issued with one uniform. Such uniforms shall be replaced on a fair wear and tear basis:

Provided that casual and part-time employees shall be provided with further uniforms as required, dependent upon the regularity of shifts worked.

10.2 Dressing and meal rooms

The employers shall provide dressing and dining rooms in accordance with the provisions of the *Queensland Workplace Health and Safety Act 1995*.

10.3 First aid

In all establishments, a first aid cabinet shall be available. Such first aid cabinet shall be kept and maintained in accordance with the provisions of the *Queensland Workplace Health and Safety Act 1995* relating to such first aid cabinets.

PART 11 – UNION RELATED MATTERS

11.1 Union delegates

Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

Where appropriate, the respective Union organiser will be invited to attend a minimum of two employee meetings per year at which they will give a presentation and answer any questions the employees may have. The organiser will be the first agenda item for a period of 15 minutes.

11.2 Union Recognition

The employer recognises that employees who are covered by this Agreement may be represented by the Shop Distributive and Allied Employees' Association (SDA).

11.3 Union Membership

The employer undertakes to promote Union membership at the point of recruitment by encouraging all employees join the Shop, Distributive and Allied Employees Association (SDA).

In addition, all employees shall be given an application form to join the SDA at point of recruitment. The SDA video or supplied DVD will be shown to new employees as part of their orientation training.

11.4 Deduction of Union Dues

The employer undertakes, upon authorisation by the employee, to deduct Union membership dues, as levied by the Shop, Distributive and Allied Employees Association SDA, from the pay of employees who are members. Such monies collected will be forwarded to the Shop, Distributive and Allied Employees Association (Queensland Branch) Union at the beginning of each calendar month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

11.5 Trade Union Training Leave

11.5.1 Subject to the following conditions, elected Union delegate(s) or appointed Union Representative(s) shall be granted leave with pay to attend courses conducted by their Union which are designed to promote good industrial relations and industrial efficiency provided that:

(a) no more than 2 paid shifts shall be granted in any store in any calendar year. Any additional shifts shall be unpaid and subject to approval by the Employer.

(b) untaken paid leave shall not accrue from year to year or be transferred from one outlet to another.

11.5.2 Application to attend shall be in writing and shall include details of the type and content of the course to be attended and the dates upon which the course is to be conducted. Applications shall be made not less than one calendar month before the intended course, or such lesser period as may be agreed between the Employer, the respective Union and the employee concerned.

11.5.3 Once received, applications shall be granted by the Employer on the dates notified by the Union, subject to the ability to maintain normal store operating requirement.

11.5.4 Except in the case of a new store opening, only employees who have completed six months continuous service with an Employer shall be eligible for leave pursuant to this clause.

11.5.5 Leave granted pursuant to clause 11.5 shall count as service for all purposes of this Award.

11.5.6 Any employee on paid leave in accordance with clause 11.5 shall receive payment in accordance with the roster they would have worked for the period of absence.

11.5.7 The Employer shall not be required to pay any other costs associated with such leave.

11.5.8 On completion of the course, the Employer may require the employee to provide satisfactory proof of attendance at the course.

11.6 Copy of Agreement

The employer shall provide a copy of this Agreement to be posted in a conspicuous place on the employer's premises.

SCHEDULE A

This Schedule is the National Employment Standards.

These standards represent the Minimum Conditions of Employment prevailing under Sections 59 to 131 of the Fair Work Act 2009.

Where a condition of these Standards provides for an improved benefit when compared to the equivalent benefit under this Agreement, then these Standards apply to the extent of the inconsistency.

This Schedule will be amended to incorporate any amendments if at any time in the future the Act is amended.

Part 2-2—The National Employment Standards.

Division 1—Introduction

59 Guide to this Part

This Part contains the National Employment Standards.

Division 2 identifies the National Employment Standards, the detail of which is set out in Divisions 3 to 12.

Division 13 contains miscellaneous provisions relating to the National Employment Standards.

The National Employment Standards are minimum standards that apply to the employment of national system employees. Part 2-1 (which deals with the core provisions for this Chapter) contains the obligation for employers to comply with the National Employment Standards (see section 44).

The National Employment Standards also underpin what can be included in modern awards and enterprise agreements. Part 2-1 provides that the National Employment Standards cannot be excluded by modern awards or enterprise agreements, and contains other provisions about the interaction between the National Employment Standards and modern awards or enterprise agreements (see sections 55 and 56).

Divisions 2 and 3 of Part 6-3 extend the operation of the parental leave and notice of termination provisions of the National Employment Standards to employees who are not national system employees.

60 Meanings of *employee* and *employer*

In this Part, *employee* means a national system employee, and *employer* means a national system employer.

Division 2—The National Employment Standards

61 The National Employment Standards are minimum standards applying to employment of employees

- (1) This Part sets minimum standards that apply to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5).

Note: Subsection 55(5) allows enterprise agreements to include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards.

- (2) The minimum standards relate to the following matters:
 - (a) maximum weekly hours (Division 3);
 - (b) requests for flexible working arrangements (Division 4);
 - (c) parental leave and related entitlements (Division 5);
 - (d) annual leave (Division 6);
 - (e) personal/carer's leave and compassionate leave (Division 7);
 - (f) community service leave (Division 8);
 - (g) long service leave (Division 9);
 - (h) public holidays (Division 10);
 - (i) notice of termination and redundancy pay (Division 11);
 - (j) Fair Work Information Statement (Division 12).
- (3) Divisions 3 to 12 constitute the *National Employment Standards*.

Division 3—Maximum weekly hours

62 Maximum weekly hours

Maximum weekly hours of work

- (1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:
 - (a) for a full-time employee—38 hours; or
 - (b) for an employee who is not a full-time employee—the lesser of:
 - (i) 38 hours; and
 - (ii) the employee's ordinary hours of work in a week.

Employee may refuse to work unreasonable additional hours

- (2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.

Determining whether additional hours are reasonable

- (3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:
 - (a) any risk to employee health and safety from working the additional hours;
 - (b) the employee's personal circumstances, including family responsibilities;
 - (c) the needs of the workplace or enterprise in which the employee is employed;
 - (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
 - (e) any notice given by the employer of any request or requirement to work the additional hours;
 - (f) any notice given by the employee of his or her intention to refuse to work the additional hours;
 - (g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
 - (h) the nature of the employee's role, and the employee's level of responsibility;
 - (i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;
 - (j) any other relevant matter.

Authorised leave or absence treated as hours worked

- (4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:
 - (a) by the employer's employer; or
 - (b) by or under a term or condition of the employee's employment; or
 - (c) by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.

63 Modern awards and enterprise agreements may provide for averaging of hours of work

A modern award or enterprise agreement may include terms providing for the averaging of hours of work over a specified period. The average weekly hours over the period must not exceed:

- (a) for a full-time employee—38 hours; or
- (b) for an employee who is not a full-time employee—the lesser of:
 - (i) 38 hours; and
 - (ii) the employee's ordinary hours of work in a week.

Note: Hours in excess of the hours referred to in paragraph (a) or (b) that are worked in a week in accordance with averaging terms in a modern award or enterprise agreement will be treated as additional hours for the purpose of section 62, but the averaging terms will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).

64 Averaging of hours of work for award/agreement free employees

An employer and an award/agreement free employee may agree in writing to an averaging arrangement under which hours of work over a specified period of not more than 26 weeks are averaged. The average weekly hours over the specified period must not exceed:

- (a) for a full-time employee—38 hours; or
- (b) for an employee who is not a full-time employee—the lesser of:
 - (i) 38 hours; and
 - (ii) the employee's ordinary hours of work in a week.

Note: Hours in excess of the hours referred to in paragraph (a) or (b) that are worked in a week in accordance with an agreed averaging arrangement will be treated as additional hours for the purpose of section 62, but the averaging arrangement will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).

Division 4—Requests for flexible working arrangements

65 Requests for flexible working arrangements

Employee may request change in working arrangements

- (1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:
 - (a) is under school age; or
 - (b) is under 18 and has a disability.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

- (2) The employee is not entitled to make the request unless:
 - (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
 - (b) for a casual employee—the employee:
 - (i) is a long term casual employee of the employer immediately before making the request; and
 - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Formal requirements

- (3) The request must:
 - (a) be in writing; and
 - (b) set out details of the change sought and of the reasons for the change.

Agreeing to the request

- (4) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.
- (5) The employer may refuse the request only on reasonable business grounds.
- (6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

66 State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to flexible working arrangements, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.

Division 5—Parental leave and related entitlements

Subdivision A—General

67 General rule—employee must have completed at least 12 months of service

Employees other than casual employees

- (1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave) unless the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before the date that applies under subsection (3).

Casual employees

- (2) A casual employee, is not entitled to leave (other than unpaid pre-adoption leave) under this Division unless:
 - (a) the employee is, or will be, a long term casual employee of the employer immediately before the date that applies under subsection (3); and
 - (b) but for:
 - (i) the birth or expected birth of the child; or
 - (ii) the placement or the expected placement of the child; or
 - (iii) if the employee is taking a period of unpaid parental leave that starts under subsection 71(6) or paragraph 72(3)(b) or 72(4)(b)—the taking of the leave; the employee would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Date at which employee must have completed 12 months of service

- (3) For the purpose of subsections (1) and (2), the date that applies is:
 - (a) unless paragraph (b) or (c) applies:
 - (i) if the leave is birth-related leave—the date of birth, or the expected date of birth, of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement, or the expected day of placement, of the child; or
 - (b) for an employee taking a period of unpaid parental leave that is to start within 12 months after the birth or placement of the child under subsection 71(6)—the date on which the employee's period of leave is to start; or
 - (c) for a member of an employee couple taking a period of unpaid parental leave that is to start under paragraph 72(3)(b) or 72(4)(b) after the period of unpaid parental leave of the other member of the employee couple—the date on which the employee's period of leave is to start.

Meaning of birth-related leave

- (4) **Birth-related leave** means leave of either of the following kinds:
 - (a) unpaid parental leave taken in association with the birth of a child (see section 70);
 - (b) unpaid special maternity leave (see section 80).

Meaning of adoption-related leave

- (5) **Adoption-related leave** means leave of either of the following kinds:
 - (a) unpaid parental leave taken in association with the placement of a child for adoption (see section 70);

- (b) unpaid pre-adoption leave (see section 85).

Meaning of day of placement

- (6) The **day of placement**, in relation to the adoption of a child by an employee, means the earlier of the following days:
 - (a) the day on which the employee first takes custody of the child for the adoption;
 - (b) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.

68 General rule for adoption-related leave—child must be under 16 etc.

An employee is not entitled to adoption-related leave unless the child that is, or is to be, placed with the employee for adoption:

- (a) is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child; and
- (b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement, or the expected day of placement, of the child; and
- (c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.

69 Transfer of employment situations in which employee is entitled to continue on leave etc.

- (1) If:
 - (a) there is a transfer of employment in relation to an employee; and
 - (b) the employee has already started a period of leave under this Division when his or her employment with the first employer ends;the employee is entitled to continue on that leave for the rest of that period.
- (2) If:
 - (a) there is a transfer of employment in relation to an employee; and
 - (b) the employee has, in relation to the first employer, already taken a step that is required or permitted by a provision of this Division in relation to taking a period of leave;the employee is taken to have taken the step in relation to the second employer.

Note: Steps covered by this subsection include (for example) giving the first employer notice under subsection 74(1), confirmation or advice under subsection 74(4) or evidence under subsection 74(5).

Subdivision B—Parental leave

70 Entitlement to unpaid parental leave

An employee is entitled to 12 months of unpaid parental leave if:

- (a) the leave is associated with:
 - (i) the birth of a child of the employee or the employee's spouse or de facto partner; or
 - (ii) the placement of a child with the employee for adoption; and
- (b) the employee has or will have a responsibility for the care of the child.

Note 1: Entitlement is also affected by section 67 (which deals with length of the employee's service) and, for adoption, section 68 (which deals with the age etc. of the adopted child).

Note 2: The 12 months is reduced by the amount of any unpaid special maternity leave the employee has taken (see subsection 80(7)).

71 The period of leave—other than for members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee who intends to take unpaid parental leave if:
 - (a) the employee is not a member of an employee couple; or
 - (b) the employee is a member of an employee couple, but the other member of the couple does not intend to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) The employee must take the leave in a single continuous period.

Note: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

When birth-related leave must start

- (3) If the leave is birth-related leave for a female employee who is pregnant with, or gives birth to, the child, the period of leave may start up to 6 weeks before the expected date of birth of the child, but must not start later than the date of birth of the child.
- (4) If the leave is birth-related leave but subsection (3) does not apply, the period of leave must start on the date of birth of the child.

When adoption-related leave must start

- (5) If the leave is adoption-related leave, the period of leave must start on the day of placement of the child.

Leave may start later for employees whose spouse or de facto partner is not an employee

- (6) Despite subsections (3) to (5), the period of leave may start at any time within 12 months after the date of birth or day of placement of the child if:
 - (a) the employee has a spouse or de facto partner who is not an employee; and
 - (b) the spouse or de facto partner has a responsibility for the care of the child for the period between the date of birth or day of placement of the child and the start date of the leave.

Note: An employee whose leave starts under subsection (6) is still entitled under section 76 to request an extension of the period of leave beyond his or her available parental leave period. However, the period of leave may not be extended beyond 24 months after the date of birth or day of placement of the child (see subsection 76(7)).

72 The period of leave—members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee couple if each of the employees intends to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) Each employee must take the leave in a single continuous period.

Note: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

When birth-related leave must start

- (3) If the leave is birth-related leave:
 - (a) one employee's period of leave must start first, in accordance with the following rules:

- (i) if the member of the employee couple whose period of leave starts first is a female employee who is pregnant with, or gives birth to, the child—the period of leave may start up to 6 weeks before the expected date of birth of the child, but must not start later than the date of birth of the child;
- (ii) if subparagraph (i) does not apply—the period of leave must start on the date of birth of the child; and
- (b) the other employee's period of leave must start immediately after the end of the first employee's period of leave (or that period as extended under section 75 or 76).

When adoption-related leave must start

- (4) If the leave is adoption-related leave:
 - (a) one employee's period of leave must start on the day of placement of the child; and
 - (b) the other employee's period of leave must start immediately after the end of the first employee's period of leave (or that period as extended under section 75 or 76).

Limited entitlement to take concurrent leave

- (5) If one of the employees takes a period (the **first employee's period of leave**) of unpaid parental leave in accordance with paragraph (3)(a) or (4)(a), the other employee may take a period of unpaid parental leave (the **concurrent leave**) during the first employee's period of leave, if the concurrent leave complies with the following requirements:
 - (a) the concurrent leave must be for a period of 3 weeks or less;
 - (b) unless the employer agrees as referred to in paragraph (c), the concurrent leave must not start before, and must not end more than 3 weeks after:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child;
 - (c) if the employer agrees, the concurrent leave may (subject to paragraph (a)):
 - (i) start earlier than is permitted by paragraph (b); or
 - (ii) end up to 3 weeks later than is permitted by paragraph (b).
- (6) Concurrent leave taken by an employee:
 - (a) is an exception to the rule that the employee must take his or her leave in a single continuous period (see subsection (2)); and
 - (b) is an exception to the rules about when the employee's period of unpaid parental leave must start (see subsection (3) or (4)).

Note: The concurrent leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

73 Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth

Employer may ask employee to provide a medical certificate

- (1) If a pregnant employee who is entitled to unpaid parental leave (whether or not she has complied with section 74) continues to work during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate containing the following statements (as applicable):
 - (a) a statement of whether the employee is fit for work;
 - (b) if the employee is fit for work—a statement of whether it is inadvisable for the employee to continue in her present position during a stated period because of:
 - (i) illness, or risks, arising out of the employee's pregnancy; or
 - (ii) hazards connected with the position.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the **period of leave**) as soon as practicable if:
- (a) the employee does not give the employer the requested certificate within 7 days after the request; or
 - (b) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is not fit for work; or
 - (c) the following subparagraphs are satisfied:
 - (i) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is fit for work, but that it is inadvisable for the employee to continue in her present position for a stated period for a reason referred to in subparagraph (1)(b)(i) or (ii);
 - (ii) section 81 does not apply to the employee.

Note: If the medical certificate contains a statement as referred to in subparagraph (c)(i) and section 81 applies to the employee, the employee is entitled under that section to be transferred to a safe job, or to paid no safe job leave.

When the period of leave must end

- (3) The period of leave must not end later than the earlier of the following:
- (a) the end of the pregnancy;
 - (b) if the employee has given the employer notice of the taking of a period of leave connected with the birth of the child (whether it is unpaid parental leave or some other kind of leave)—the start date of that leave.

Special rules about the period of leave

- (4) The period of leave:
- (a) is an exception to the rule that the employee must take her unpaid parental leave in a single continuous period (see subsection 71(2) or 72(2)); and
 - (b) is an exception to the rules about when the employee's period of unpaid parental leave must start (see subsections 71(3) and (6), or subsection 72(3)).

Note: The period of leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

- (5) The employee is not required to comply with section 74 in relation to the period of leave.

74 Notice and evidence requirements

Notice

- (1) An employee must give his or her employer written notice of the taking of unpaid parental leave under section 71 or 72 by the employee.
- (2) The notice must be given to the employer:
- (a) at least 10 weeks before starting the leave; or
 - (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).
- (3) The notice must specify the intended start and end dates of the leave.

Confirmation or change of intended start and end dates

- (4) At least 4 weeks before the intended start date specified in the notice given under subsection (1), the employee must:
- (a) confirm the intended start and end dates of the leave; or
 - (b) advise the employer of any changes to the intended start and end dates of the leave;

unless it is not practicable to do so.

Evidence

- (5) An employee who has given his or her employer notice of the taking of unpaid parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person:
 - (a) if the leave is birth-related leave—of the date of birth, or the expected date of birth, of the child; or
 - (b) if the leave is adoption-related leave:
 - (i) of the day of placement, or the expected day of placement, of the child; and
 - (ii) that the child is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child.
- (6) Without limiting subsection (5), an employer may require the evidence referred to in paragraph (5)(a) to be a medical certificate.

Compliance

- (7) An employee is not entitled to take unpaid parental leave under section 71 or 72 unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

75 Extending period of unpaid parental leave—extending to use more of available parental leave period

Application of this section

- (1) This section applies if:
 - (a) an employee has, in accordance with section 74, given notice of the taking of a period of unpaid parental leave (the **original leave period**); and
 - (b) the original leave period is less than the employee's available parental leave period; and
 - (c) the original leave period has started.
- (2) The employee's **available parental leave period** is 12 months, less any periods of the following kinds:
 - (a) a period of concurrent leave that the employee has taken in accordance with subsection 72(5);
 - (b) a period of unpaid parental leave that the employee has been required to take under subsection 73(2) or 82(2);
 - (c) a period by which the employee's entitlement to unpaid parental leave is reduced under paragraph 76(6)(c);
 - (d) a period of special maternity leave that the employee has taken.

First extension by giving notice to employer

- (3) The employee may extend the period of unpaid parental leave by giving his or her employer written notice of the extension at least 4 weeks before the end date of the original leave period. The notice must specify the new end date for the leave.
- (4) Only one extension is permitted under subsection (3).

Further extensions by agreement with employer

- (5) If the employer agrees, the employee may further extend the period of unpaid parental leave one or more times.

No entitlement to extension beyond available parental leave period

- (6) The employee is not entitled under this section to extend the period of unpaid parental leave beyond the employee's available parental leave period.

76 Extending period of unpaid parental leave—extending for up to 12 months beyond available parental leave period

Employee may request further period of leave

- (1) An employee who takes unpaid parental leave for his or her available parental leave period may request his or her employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

Making the request

- (2) The request must be in writing, and must be given to the employer at least 4 weeks before the end of the available parental leave period.

Agreeing to the requested extension

- (3) The employer must give the employee a written response to the request stating whether the employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.
- (4) The employer may refuse the request only on reasonable business grounds.
- (5) If the employer refuses the request, the written response under subsection (3) must include details of the reasons for the refusal.

Special rules for employee couples

- (6) The following paragraphs apply in relation to a member of an employee couple extending a period of unpaid parental leave in relation to a child under this section:
 - (a) the request must specify any amount of unpaid parental leave and unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - (b) the period of the extension cannot exceed 12 months, less any period of unpaid parental leave or unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;
 - (c) the amount of unpaid parental leave to which the other member of the employee couple is entitled under section 70 in relation to the child is reduced by the period of the extension.

No extension beyond 24 months after birth or placement

- (7) Despite any other provision of this Division, the employee is not entitled to extend the period of unpaid parental leave beyond 24 months after the date of birth or day of placement of the child.

77 Reducing period of unpaid parental leave

If the employer agrees, an employee whose period of unpaid parental leave has started may reduce the period of unpaid parental leave he or she takes.

78 Employee who ceases to have responsibility for care of child

- (1) This section applies to an employee who has taken unpaid parental leave in relation to a child if the employee ceases to have any responsibility for the care of the child.

- (2) The employer may give the employee written notice requiring the employee to return to work on a specified day.
- (3) The specified day:
 - (a) must be at least 4 weeks after the notice is given to the employee; and
 - (b) if the leave is birth-related leave taken by a female employee who has given birth—must not be earlier than 6 weeks after the date of birth of the child.
- (4) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

79 Interaction with paid leave

- (1) This Subdivision (except for subsections (2) and (3)) does not prevent an employee from taking any other kind of paid leave while he or she is taking unpaid parental leave. If the employee does so, the taking of that other paid leave does not break the continuity of the period of unpaid parental leave.

Note: For example, if the employee has paid annual leave available, he or she may (with the employer's agreement) take some or all of that paid annual leave at the same time as the unpaid parental leave.

- (2) An employee is not entitled to take paid personal/carer's leave or compassionate leave while he or she is taking unpaid parental leave.
- (3) An employee is not entitled to any payment under Division 8 (which deals with community service leave) in relation to activities the employee engages in while taking unpaid parental leave.

Subdivision C—Other entitlements

80 Unpaid special maternity leave

Entitlement to unpaid special maternity leave

- (1) A female employee is entitled to a period of unpaid special maternity leave if she is not fit for work during that period because:
 - (a) she has a pregnancy-related illness; or
 - (b) she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.

Note: Entitlement is also affected by section 67 (which deals with the length of the employee's service).

Notice and evidence

- (2) An employee must give her employer notice of the taking of unpaid special maternity leave by the employee.
- (3) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (4) An employee who has given her employer notice of the taking of unpaid special maternity leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in subsection (1).
- (5) Without limiting subsection (4), an employer may require the evidence referred to in that subsection to be a medical certificate.
- (6) An employee is not entitled to take unpaid special maternity leave unless the employee complies with subsections (2) to (4).

Taking of special maternity leave reduces entitlement to unpaid parental leave

- (7) A female employee's entitlement to 12 months of unpaid parental leave associated with the birth of a child (see section 70) is reduced by the amount of any unpaid special maternity leave taken by the employee while she was pregnant.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

81 Transfer to a safe job

Application of this section

- (1) This section applies to a pregnant employee if:
- (a) she is entitled to unpaid parental leave; and
 - (b) she has already complied with the notice and evidence requirements of section 74 for taking unpaid parental leave; and
 - (c) she gives her employer evidence that would satisfy a reasonable person that she is fit for work, but that it is inadvisable for her to continue in her present position during a stated period (the **risk period**) because of:
 - (i) illness, or risks, arising out of her pregnancy; or
 - (ii) hazards connected with that position.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

- (2) Without limiting paragraph (1)(c), an employer may require the evidence referred to in that paragraph to be a medical certificate.

Employee entitled to appropriate safe job or paid no safe job leave during risk period

- (3) If this section applies to an employee:
- (a) if there is an appropriate safe job available—the employer must transfer the employee to that job for the risk period, with no other change to the employee's terms and conditions of employment; or
 - (b) if there is no appropriate safe job available—the employee is entitled to take paid no safe job leave for the risk period.
- (4) An **appropriate safe job** is a safe job that has:
- (a) the same ordinary hours of work as the employee's present position; or
 - (b) a different number of ordinary hours agreed to by the employee.

Payment to employee if transferred to appropriate safe job

- (5) Without limiting paragraph (3)(a), if the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.

Payment to employee if on paid no safe job leave

- (6) If the employee takes paid no safe job leave for the risk period, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the risk period.

Risk period ends if pregnancy ends

- (7) If the employee's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.

82 Employee on paid no safe job leave may be asked to provide a further medical certificate

Employer may ask employee to provide a medical certificate

- (1) If an employee is on paid no safe job leave during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate stating whether the employee is fit for work.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the **period of leave**) as soon as practicable if:
 - (a) the employee does not give the employer the requested certificate within 7 days after the request; or
 - (b) within 7 days after the request, the employee gives the employer a certificate stating that the employee is not fit for work.

Entitlement to paid no safe job leave ends

- (3) When the period of leave starts, the employee's entitlement to paid no safe job leave ends.

When the period of leave must end etc.

- (4) Subsections 73(3), (4) and (5) apply to the period of leave.

83 Consultation with employee on unpaid parental leave

- (1) If:
 - (a) an employee is on unpaid parental leave; and
 - (b) the employee's employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position;the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (2) The employee's **pre-parental leave position** is:
 - (a) unless paragraph (b) applies, the position the employee held before starting the unpaid parental leave; or
 - (b) if, before starting the unpaid parental leave, the employee:
 - (i) was transferred to a safe job because of her pregnancy; or
 - (ii) reduced her working hours due to her pregnancy;the position the employee held immediately before that transfer or reduction.

84 Return to work guarantee

On ending unpaid parental leave, an employee is entitled to return to:

- (a) the employee's pre-parental leave position; or
- (b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

85 Unpaid pre-adoption leave

Entitlement to unpaid pre-adoption leave

- (1) An employee is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.

Note: Entitlement is also affected by section 68 (which deals with the age etc. of the adopted child).

- (2) However, an employee is not entitled to take a period of unpaid pre-adoption leave if:
 - (a) the employee could instead take some other form of leave; and
 - (b) the employer directs the employee to take that other form of leave.
- (3) An employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:
 - (a) a single continuous period of up to 2 days; or
 - (b) any separate periods to which the employee and the employer agree.

Notice and evidence

- (4) An employee must give his or her employer notice of the taking of unpaid pre-adoption leave by the employee.
- (5) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (6) An employee who has given his or her employer notice of the taking of unpaid pre-adoption leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as referred to in subsection (1).
- (7) An employee is not entitled to take unpaid pre-adoption leave unless the employee complies with subsections (4) to (6).

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Division 6—Annual leave

86 Division applies to employees other than casual employees

This Division applies to employees, other than casual employees.

87 Entitlement to annual leave

Amount of leave

- (1) For each year of service with his or her employer, an employee is entitled to:
 - (a) 4 weeks of paid annual leave; or
 - (b) 5 weeks of paid annual leave, if:
 - (i) a modern award applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
 - (ii) an enterprise agreement applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
 - (iii) the employee qualifies for the shiftworker annual leave entitlement under subsection (3) (this relates to award/agreement free employees).

Note: Section 196 affects whether FWA may approve an enterprise agreement covering an employee, if the employee is covered by a modern award that is in operation and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards.

Accrual of leave

- (2) An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

Note: If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to when the employment ends.

Award/agreement free employees who qualify for the shiftworker entitlement

- (3) An award/agreement free employee qualifies for the shiftworker annual leave entitlement if:
 - (a) the employee:
 - (i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and
 - (ii) is regularly rostered to work those shifts; and
 - (iii) regularly works on Sundays and public holidays; or
 - (b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards.
- (4) However, an employee referred to in subsection (3) does not qualify for the shiftworker annual leave entitlement if the employee is in a class of employees prescribed by the regulations as not being qualified for that entitlement.
- (5) Without limiting the way in which a class may be described for the purposes of paragraph (3)(b) or subsection (4), the class may be described by reference to one or more of the following:
 - (a) a particular industry or part of an industry;
 - (b) a particular kind of work;
 - (c) a particular type of employment.

88 Taking paid annual leave

- (1) Paid annual leave may be taken for a period agreed between an employee and his or her employer.
- (2) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

89 Employee not taken to be on paid annual leave at certain times

Public holidays

- (1) If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

Other periods of leave

- (2) If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under this Part, or a period of absence from employment under Division 8 (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.

90 Payment for annual leave

- (1) If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (2) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

91 Transfer of employment situations that affect entitlement to payment for period of untaken paid annual leave

Transfer of employment situation in which employer may decide not to recognise employee's service with first employer

- (1) Subsection 22(5) does not apply (for the purpose of this Division) to a transfer of employment between non-associated entities in relation to an employee, if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Division).

Employee is not entitled to payment for untaken annual leave if service with first employer counts as service with second employer

- (2) If subsection 22(5) applies (for the purpose of this Division) to a transfer of employment in relation to an employee, the employee is not entitled to be paid an amount under subsection 90(2) for a period of untaken paid annual leave.

Note: Subsection 22(5) provides that, generally, if there is a transfer of employment, service with the first employer counts as service with the second employer.

92 Paid annual leave must not be cashed out except in accordance with permitted cashing out terms

Paid annual leave must not be cashed out, except in accordance with:

- (a) cashing out terms included in a modern award or enterprise agreement under section 93, or
- (b) an agreement between an employer and an award/agreement free employee under subsection 94(1).

93 Modern awards and enterprise agreements may include terms relating to cashing out and taking paid annual leave

Terms about cashing out paid annual leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.
- (2) The terms must require that:
 - (a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Terms about requirements to take paid annual leave

- (3) A modern award or enterprise agreement may include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable.

Terms about taking paid annual leave

- (4) A modern award or enterprise agreement may include terms otherwise dealing with the taking of paid annual leave.

94 Cashing out and taking paid annual leave for award/agreement free employees

Agreements to cash out paid annual leave

- (1) An employer and an award/agreement free employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave.
- (2) The employer and the employee must not agree to the employee cashing out an amount of paid annual leave if the agreement would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (3) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.

- (4) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Requirements to take paid annual leave

- (5) An employer may require an award/agreement free employee to take a period of paid annual leave, but only if the requirement is reasonable.

Note: A requirement to take paid annual leave may be reasonable if, for example:

- (a) the employee has accrued an excessive amount of paid annual leave; or
- (b) the employer's enterprise is being shut down for a period (for example, between Christmas and New Year).

Agreements about taking paid annual leave

- (6) An employer and an award/agreement free employee may agree on when and how paid annual leave may be taken by the employee.

Note: Matters that could be agreed include, for example, the following:

- (a) that paid annual leave may be taken in advance of accrual;
- (b) that paid annual leave must be taken within a fixed period of time after it is accrued;
- (c) the form of application for paid annual leave;
- (d) that a specified period of notice must be given before taking paid annual leave.

Division 7—Personal/carer’s leave and compassionate leave

Subdivision A—Paid personal/carer’s leave

95 Subdivision applies to employees other than casual employees

This Subdivision applies to employees, other than casual employees.

96 Entitlement to paid personal/carer’s leave

Amount of leave

- (1) For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer’s leave.

Accrual of leave

- (2) An employee’s entitlement to paid personal/carer’s leave accrues progressively during a year of service according to the employee’s ordinary hours of work, and accumulates from year to year.

97 Taking paid personal/carer’s leave

An employee may take paid personal/carer’s leave if the leave is taken:

- (a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

Note: The notice and evidence requirements of section 107 must be complied with.

98 Employee taken not to be on paid personal/carer’s leave on public holiday

If the period during which an employee takes paid personal/carer’s leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer’s leave on that public holiday.

99 Payment for paid personal/carer’s leave

If, in accordance with this Subdivision, an employee takes a period of paid personal/carer’s leave, the employer must pay the employee at the employee’s base rate of pay for the employee’s ordinary hours of work in the period.

100 Paid personal/carer’s leave must not be cashed out except in accordance with permitted cashing out terms

Paid personal/carer’s leave must not be cashed out, except in accordance with cashing out terms included in a modern award or enterprise agreement under section 101.

101 Modern awards and enterprise agreements may include terms relating to cashing out paid personal/carer’s leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid personal/carer’s leave by an employee.
- (2) The terms must require that:

- (a) paid personal/carer's leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid personal/carer's leave being less than 15 days; and
- (b) each cashing out of a particular amount of paid personal/carer's leave must be by a separate agreement in writing between the employer and the employee; and
- (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Subdivision B—Unpaid carer's leave

102 Entitlement to unpaid carer's leave

An employee is entitled to 2 days of unpaid carer's leave for each occasion (a *permissible occasion*) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:

- (a) a personal illness, or personal injury, affecting the member; or
- (b) an unexpected emergency affecting the member.

103 Taking unpaid carer's leave

- (1) An employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in section 102.
- (2) An employee may take unpaid carer's leave for a particular permissible occasion as:
 - (a) a single continuous period of up to 2 days; or
 - (b) any separate periods to which the employee and his or her employer agree.
- (3) An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.

Note: The notice and evidence requirements of section 107 must be complied with.

Subdivision C—Compassionate leave

104 Entitlement to compassionate leave

An employee is entitled to 2 days of compassionate leave for each occasion (a *permissible occasion*) when a member of the employee's immediate family, or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life; or
- (c) dies.

105 Taking compassionate leave

- (1) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - (a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in section 104; or
 - (b) after the death of the member of the employee's immediate family or household referred to in section 104.
- (2) An employee may take compassionate leave for a particular permissible occasion as:
 - (a) a single continuous 2 day period; or
 - (b) 2 separate periods of 1 day each; or
 - (c) any separate periods to which the employee and his or her employer agree.

- (3) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Note: The notice and evidence requirements of section 107 must be complied with.

106 Payment for compassionate leave (other than for casual employees)

If, in accordance with this Subdivision, an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

Note: For casual employees, compassionate leave is unpaid leave.

Subdivision D—Notice and evidence requirements

107 Notice and evidence requirements

Notice

- (1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.
- (2) The notice:
- (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.

Evidence

- (3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
- (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or
 - (b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1); or
 - (c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1).

Compliance

- (4) An employee is not entitled to take leave under this Division unless the employee complies with this section.

Modern awards and enterprise agreements may include evidence requirements

- (5) A modern award or enterprise agreement may include terms relating to the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Division 8—Community service leave

108 Entitlement to be absent from employment for engaging in eligible community service activity

An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

- (a) the period consists of one or more of the following:
 - (i) time when the employee engages in the activity;
 - (ii) reasonable travelling time associated with the activity;
 - (iii) reasonable rest time immediately following the activity; and
- (b) unless the activity is jury service—the employee’s absence is reasonable in all the circumstances.

109 Meaning of *eligible community service activity*

General

- (1) Each of the following is an ***eligible community service activity***:
 - (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
 - (b) a voluntary emergency management activity (see subsection (2)); or
 - (c) an activity prescribed in regulations made for the purpose of subsection (4).

Voluntary emergency management activities

- (2) An employee engages in a ***voluntary emergency management activity*** if, and only if:
 - (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
 - (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
 - (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
 - (d) either:
 - (i) the employee was requested by or on behalf of the body to engage in the activity; or
 - (ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (3) A ***recognised emergency management body*** is:
 - (a) a body, or part of a body, that has a role or function under a plan that:
 - (i) is for coping with emergencies and/or disasters; and
 - (ii) is prepared by the Commonwealth, a State or a Territory; or
 - (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
 - (c) any other body, or part of a body, a substantial purpose of which involves:
 - (i) securing the safety of persons or animals in an emergency or natural disaster; or
 - (ii) protecting property in an emergency or natural disaster; or
 - (iii) otherwise responding to an emergency or natural disaster; or
 - (d) a body, or part of a body, prescribed by the regulations;

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this Division.

Regulations may prescribe other activities

- (4) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity.

110 Notice and evidence requirements

Notice

- (1) An employee who wants an absence from his or her employment to be covered by this Division must give his or her employer notice of the absence.
- (2) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
 - (b) must advise the employer of the period, or expected period, of the absence.

Evidence

- (3) An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

Compliance

- (4) An employee's absence from his or her employment is not covered by this Division unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

111 Payment to employees (other than casuals) on jury service

Application of this section

- (1) This section applies if:
 - (a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and
 - (b) the employee is not a casual employee.

Employee to be paid base rate of pay

- (2) Subject to subsections (3), (4) and (5), the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

Evidence

- (3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
 - (a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
 - (b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

- (4) If, in accordance with subsection (3), the employer requires the employee to give the employer the evidence referred to in that subsection:
- (a) the employee is not entitled to payment under subsection (2) unless the employee provides the evidence; and
 - (b) if the employee provides the evidence—the amount payable to the employee under subsection (2) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

Payment only required for first 10 days of absence

- (5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
- (a) the employer is only required to pay the employee for the first 10 days of absence; and
 - (b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and
 - (c) the reference in subsection (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.

Meaning of jury service pay

- (6) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.

Meaning of jury service summons

- (7) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

112 State and Territory laws that are not excluded

- (1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to engaging in eligible community service activities, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.

Note: For example, this Act would not apply to the exclusion of a State or Territory law providing for a casual employee to be paid jury service pay.

- (2) If the community service activity is an activity prescribed in regulations made for the purpose of subsection 109(4), subsection (1) of this section has effect subject to any provision to the contrary in the regulations.

Division 9—Long service leave

113 Entitlement to long service leave

Entitlement in accordance with applicable award-derived long service leave terms

- (1) If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

Note: This Act does not exclude State and Territory laws that deal with long service leave, except in relation to employees who are entitled to long service leave under this Division (see paragraph 27(2)(g)), and except as provided in subsection 113A(3).

- (2) However, subsection (1) does not apply if:
- (a) a workplace agreement, or an AWA, that came into operation before the commencement of this Part applies to the employee; or
 - (b) one of the following kinds of instrument that came into operation before the commencement of this Part applies to the employee and expressly deals with long service leave:
 - (i) an enterprise agreement;
 - (ii) a preserved State agreement;
 - (iii) a workplace determination;
 - (iv) a pre-reform certified agreement;
 - (v) a pre-reform AWA;
 - (vi) a section 170MX award;
 - (vii) an old IR agreement.

Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (a) or (b) that applies to the employee, the employee will, at that time, become entitled under subsection (1) to long service leave in accordance with applicable award-derived long service leave terms.

- (3) ***Applicable award-derived long service leave terms***, in relation to an employee, are:
- (a) terms of an award that (disregarding the effect of any instrument of a kind referred to in subsection (2)):
 - (i) would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
 - (ii) would have entitled the employee to long service leave; and
 - (b) any terms of the award that are ancillary or incidental to the terms referred to in paragraph (a).

Entitlement in accordance with applicable agreement-derived long service leave terms

- (4) If there are applicable agreement-derived long service leave terms (see subsection (5)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.
- (5) There are ***applicable agreement-derived long service leave terms***, in relation to an employee if:
- (a) an order under subsection (6) is in operation in relation to terms of an instrument; and
 - (b) those terms of the instrument would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
 - (c) there are no applicable award-derived long service leave terms in relation to the employee.
- (6) If FWA is satisfied that:
- (a) any of the following instruments that was in operation immediately before the commencement of this Part contained terms entitling employees to long service leave:

- (i) an enterprise agreement;
- (ii) a collective agreement;
- (iii) a pre-reform certified agreement;
- (iv) an old IR agreement; and
- (b) those terms constituted a long service leave scheme that was applying in more than one State or Territory; and
- (c) the scheme, considered on an overall basis, is no less beneficial to the employees than the long service leave entitlements that would otherwise apply in relation to the employees under State and Territory laws;

FWA may, on application by, or on behalf of, a person to whom the instrument applies, make an order that those terms of the instrument (and any terms that are ancillary or incidental to those terms) are applicable agreement-derived long service leave terms.

References to instruments

- (7) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

113A Enterprise agreements may contain terms discounting service under prior agreements etc. in certain circumstances

- (1) This section applies if:
 - (a) an instrument (the **first instrument**) of one of the following kinds that came into operation before the commencement of this Part applies to an employee on or after the commencement of this Part:
 - (i) an enterprise agreement;
 - (ii) a workplace agreement;
 - (iii) a workplace determination;
 - (iv) a preserved State agreement;
 - (v) an AWA;
 - (vi) a pre-reform certified agreement;
 - (vii) a pre-reform AWA;
 - (viii) an old IR agreement;
 - (ix) a section 170MX award; and
 - (b) the instrument states that the employee is not entitled to long service leave; and
 - (c) the instrument ceases, for whatever reason, to apply to the employee; and
 - (d) immediately after the first instrument ceases to apply, an enterprise agreement (the **replacement agreement**) starts to apply to the employee.
- (2) The replacement agreement may include terms to the effect that an employee's service with the employer during a specified period (the **excluded period**) (being some or all of the period when the first instrument applied to the employee) does not count as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.
- (3) If the replacement agreement includes terms as permitted by subsection (2), the excluded period does not count, and never again counts, as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory, unless a later agreement provides otherwise. This subsection has effect despite sections 27 and 29.
- (4) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Division 10—Public holidays

114 Entitlement to be absent from employment on public holiday

Employee entitled to be absent on public holiday

- (1) An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.

Reasonable requests to work on public holidays

- (2) However, an employer may request an employee to work on a public holiday if the request is reasonable.
- (3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:
 - (a) the request is not reasonable; or
 - (b) the refusal is reasonable.
- (4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:
 - (a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;
 - (b) the employee's personal circumstances, including family responsibilities;
 - (c) whether the employee could reasonably expect that the employer might request work on the public holiday;
 - (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
 - (e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);
 - (f) the amount of notice in advance of the public holiday given by the employer when making the request;
 - (g) in relation to the refusal of a request—the amount of notice in advance of the public holiday given by the employee when refusing the request;
 - (h) any other relevant matter.

115 Meaning of public holiday

The public holidays

- (1) The following are **public holidays**:
 - (a) each of these days:
 - (i) 1 January (New Year's Day);
 - (ii) 26 January (Australia Day);
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) 25 April (Anzac Day);
 - (vi) the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - (vii) 25 December (Christmas Day);
 - (viii) 26 December (Boxing Day);

- (b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

Substituted public holidays under State or Territory laws

- (2) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subsection (1), then the substituted day or part-day is the **public holiday**.

Substituted public holidays under modern awards and enterprise agreements

- (3) A modern award or enterprise agreement may include terms providing for an employer and employee to agree on the substitution of a day or part-day for a day or part-day that would otherwise be a public holiday because of subsection (1) or (2).

Substituted public holidays for award/agreement free employees

- (4) An employer and an award/agreement free employee may agree on the substitution of a day or part-day for a day or part-day that would otherwise be a public holiday because of subsection (1) or (2).

Note: This Act does not exclude State and Territory laws that deal with the declaration, prescription or substitution of public holidays, but it does exclude State and Territory laws that relate to the rights and obligations of an employee or employer in relation to public holidays (see paragraph 27(2)(j)).

116 Payment for absence on public holiday

If, in accordance with this Division, an employee is absent from his or her employment on a day or part-day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part-day.

Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section. For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.

Division 11—Notice of termination and redundancy pay

Subdivision A—Notice of termination or payment in lieu of notice

117 Requirement for notice of termination or payment in lieu

Notice specifying day of termination

- (1) An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

Note 1: Section 123 describes situations in which this section does not apply.

Note 2: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an employee by:

- (a) delivering it personally; or
- (b) leaving it at the employee's last known address; or
- (c) sending it by pre-paid post to the employee's last known address.

Amount of notice or payment in lieu of notice

- (2) The employer must not terminate the employee's employment unless:
- (a) the time between giving the notice and the day of the termination is at least the period (the **minimum period of notice**) worked out under subsection (3); or
 - (b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.
- (3) Work out the minimum period of notice as follows:
- (a) first, work out the period using the following table:

Period	
Employee's period of continuous service with the employer at the end of the day the notice is given	Period
1 Not more than 1 year	1 week
2 More than 1 year but not more than 3 years	2 weeks
3 More than 3 years but not more than 5 years	3 weeks
4 More than 5 years	4 weeks

- (b) then increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given.

118 Modern awards and enterprise agreements may provide for notice of termination by employees

A modern award or enterprise agreement may include terms specifying the period of notice an employee must give in order to terminate his or her employment.

Subdivision B—Redundancy pay

119 Redundancy pay

Entitlement to redundancy pay

- (1) An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated:
 - (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (b) because of the insolvency or bankruptcy of the employer.

Note: Sections 121, 122 and 123 describe situations in which the employee does not have this entitlement.

Amount of redundancy pay

- (2) The amount of the redundancy pay equals the total amount payable to the employee for the redundancy pay period worked out using the following table at the employee's base rate of pay for his or her ordinary hours of work:

Redundancy pay period	
Employee's period of continuous service with the employer on termination	Redundancy pay period
1 At least 1 year but less than 2 years	4 weeks
2 At least 2 years but less than 3 years	6 weeks
3 At least 3 years but less than 4 years	7 weeks
4 At least 4 years but less than 5 years	8 weeks
5 At least 5 years but less than 6 years	10 weeks
6 At least 6 years but less than 7 years	11 weeks
7 At least 7 years but less than 8 years	13 weeks
8 At least 8 years but less than 9 years	14 weeks
9 At least 9 years but less than 10 years	16 weeks
10 At least 10 years	12 weeks

120 Variation of redundancy pay for other employment or incapacity to pay

- (1) This section applies if:
 - (a) an employee is entitled to be paid an amount of redundancy pay by the employer because of section 119; and
 - (b) the employer:
 - (i) obtains other acceptable employment for the employee; or
 - (ii) cannot pay the amount.
- (2) On application by the employer, FWA may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that FWA considers appropriate.
- (3) The amount of redundancy pay to which the employee is entitled under section 119 is the reduced amount specified in the determination.

121 Exclusions from obligation to pay redundancy pay

- (1) Section 119 does not apply to the termination of an employee's employment if, immediately before the time of the termination, or at the time when the person was given notice of the termination as described in subsection 117(1) (whichever happened first):

- (a) the employee's period of continuous service with the employer is less than 12 months; or
 - (b) the employer is a small business employer.
- (2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee's employment.
- (3) If a modern award that is in operation includes such a term (the **award term**), an enterprise agreement may:
- (a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and
 - (b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

122 Transfer of employment situations that affect the obligation to pay redundancy pay

Transfer of employment situation in which employer may decide not to recognise employee's service with first employer

- (1) Subsection 22(5) does not apply (for the purpose of this Subdivision) to a transfer of employment between non-associated entities in relation to an employee if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Subdivision).

Employee is not entitled to redundancy pay if service with first employer counts as service with second employer

- (2) If subsection 22(5) applies (for the purpose of this Subdivision) to a transfer of employment in relation to an employee, the employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with the first employer.

Note: Subsection 22(5) provides that, generally, if there is a transfer of employment, service with the first employer counts as service with the second employer.

Employee not entitled to redundancy pay if refuses employment in certain circumstances

- (3) An employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with an employer (the **first employer**) if:
- (a) the employee rejects an offer of employment made by another employer (the **second employer**) that:
 - (i) is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the first employer immediately before the termination; and
 - (ii) recognises the employee's service with the first employer, for the purpose of this Subdivision; and
 - (b) had the employee accepted the offer, there would have been a transfer of employment in relation to the employee.
- (4) If FWA is satisfied that subsection (3) operates unfairly to the employee, FWA may order the first employer to pay the employee a specified amount of redundancy pay (not exceeding the amount that would be payable but for subsection (3)) that FWA considers appropriate. The first employer must pay the employee that amount of redundancy pay.

Subdivision C—Limits on scope of this Division

123 Limits on scope of this Division

Employees not covered by this Division

- (1) This Division does not apply to any of the following employees:

- (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
 - (b) an employee whose employment is terminated because of serious misconduct;
 - (c) a casual employee;
 - (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
 - (e) an employee prescribed by the regulations as an employee to whom this Division does not apply.
- (2) Paragraph (1)(a) does not prevent this Division from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Division.

Other employees not covered by notice of termination provisions

- (3) Subdivision A does not apply to:
- (b) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or
 - (c) a daily hire employee working in the meat industry in connection with the slaughter of livestock; or
 - (d) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors; or
 - (e) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.

Other employees not covered by redundancy pay provisions

- (4) Subdivision B does not apply to:
- (a) an employee who is an apprentice; or
 - (b) an employee to whom an industry-specific redundancy scheme in a modern award applies; or
 - (c) an employee to whom a redundancy scheme in an enterprise agreement applies if:
 - (i) the scheme is an industry-specific redundancy scheme that is incorporated by reference (and as in force from time to time) into the enterprise agreement from a modern award that is in operation; and
 - (ii) the employee is covered by the industry-specific redundancy scheme in the modern award; or
 - (d) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.

Division 12—Fair Work Information Statement

124 Fair Work Ombudsman to prepare and publish Fair Work Information Statement

- (1) The Fair Work Ombudsman must prepare a *Fair Work Information Statement*. The Fair Work Ombudsman must publish the Statement in the *Gazette*.

Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the *Gazette*.

- (2) The Statement must contain information about the following:
 - (a) the National Employment Standards;
 - (b) modern awards;
 - (c) agreement-making under this Act;
 - (d) the right to freedom of association;
 - (e) the role of FWA and the Fair Work Ombudsman;
 - (f) termination of employment;
 - (g) individual flexibility arrangements;
 - (h) right of entry (including the protection of personal information by privacy laws).
- (3) The Fair Work Information Statement is not a legislative instrument.
- (4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

125 Giving new employees the Fair Work Information Statement

- (1) An employer must give each employee the Fair Work Information Statement before, or as soon as practicable after, the employee starts employment.
- (2) Subsection (1) does not require the employer to give the employee the Statement more than once in any 12 months.

Note: This is relevant if the employer employs the employee more than once in the 12 months.

Division 13—Miscellaneous

126 Modern awards and enterprise agreements may provide for school-based apprentices and trainees to be paid loadings in lieu

A modern award or enterprise agreement may provide for school-based apprentices or school-based trainees to be paid loadings in lieu of any of the following:

- (a) paid annual leave;
- (b) paid personal/carer's leave;
- (c) paid absence under Division 10 (which deals with public holidays).

Note: Section 199 affects whether FWA may approve an enterprise agreement covering an employee who is a school-based apprentice or school-based trainee, if the employee is covered by a modern award that is in operation and provides for the employee to be paid loadings in lieu of paid annual leave, paid personal/carer's leave or paid absence under Division 10.

127 Regulations about what modern awards and enterprise agreements can do

The regulations may:

- (a) permit modern awards or enterprise agreements or both to include terms that would or might otherwise be contrary to this Part or section 55 (which deals with the interaction between the National Employment Standards and a modern award or enterprise agreement); or
- (b) prohibit modern awards or enterprise agreements or both from including terms that would or might otherwise be permitted by a provision of this Part or section 55.

128 Relationship between National Employment Standards and agreements etc. permitted by this Part for award/agreement free employees

The National Employment Standards have effect subject to:

- (a) an agreement between an employer and an award/agreement free employee or a requirement made by an employer of an award/agreement free employee, that is expressly permitted by a provision of this Part; or
- (b) an agreement between an employer and an award/agreement free employee that is expressly permitted by regulations made for the purpose of section 129.

Note 1: In determining what matters are permitted to be agreed or required under paragraph (a), any regulations made for the purpose of section 129 that expressly prohibit certain agreements or requirements must be taken into account.

Note 2: See also the note to section 64 (which deals with the effect of averaging arrangements).

129 Regulations about what can be agreed to etc. in relation to award/agreement free employees

The regulations may:

- (a) permit employers, and award/agreement free employees, to agree on matters that would or might otherwise be contrary to this Part; or
- (b) prohibit employers and award/agreement free employees from agreeing on matters, or prohibit employers from making requirements of such employees, that would or might otherwise be permitted by a provision of this Part.

130 Restriction on taking or accruing leave or absence while receiving workers' compensation

- (1) An employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) under this Part during a period (a *compensation period*) when the employee is absent from work

because of a personal illness, or a personal injury, for which the employee is receiving compensation payable under a law (a **compensation law**) of the Commonwealth, a State or a Territory that is about workers' compensation.

- (2) Subsection (1) does not prevent an employee from taking or accruing leave during a compensation period if the taking or accruing of the leave is permitted by a compensation law.
- (3) Subsection (1) does not prevent an employee from taking unpaid parental leave during a compensation period.

131 Relationship with other Commonwealth laws

This Part establishes minimum standards and so is intended to supplement, and not to override, entitlements under other laws of the Commonwealth.

Signatures

SIGNED FOR AND ON BEHALF OF
SUNSTATE FOODS PTY LTD


.....
(SIGNATURE)

..CARL BARRIE.....
(FULL NAME)

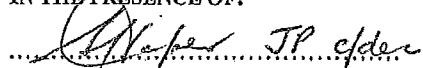
POSITION: DIRECTOR.....

ADDRESS: P.O. Box 323

..BUNDABA, Q.L.D. 4575

DATED: 22/11/09

IN THE PRESENCE OF:


..... JP c/der
(SIGNATURE)

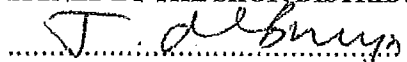
THOMAS ROBERT HARPER
(FULL NAME)

ADDRESS: 38 COOINWA CRES.

..MAROOCHYDORE Qld 4558

DATED: 22/11/09

SIGNED BY THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION:


.....
(SIGNATURE)


JOSEPH DE BRUYN
(FULL NAME)

ADDRESS: 6th FLOOR, 53 QUEEN ST.

..MELBOURNE, VIC. 3000

DATED: 18/12/09

IN THE PRESENCE OF:


.....
(SIGNATURE)

..ANTHONY COLES.....
(FULL NAME)

ADDRESS: 6th floor, 53 Queen Street

..Melbourne, Vic 3000

DATED: 18/12/2009