

AW799665 [loose-leaf version]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AUSTRALIAN INDUSTRIAL REGISTRY LOOSELEAF CONSOLIDATION
TOTALIZATOR AGENCY BOARD OF VICTORIA OFF COURSE
TOTALIZATOR EMPLOYEES AWARD 1993

Note: This award has been superseded by the TABCORP Wagering Employees Award 2003 [AW823411]

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988
s.99 notification of industrial dispute

The Federated Clerks Union of Australia

and

ACT TAB Limited and others
(C No. 21022 of 1992)

TOTALIZATOR AGENCY BOARD OF VICTORIA OFF COURSE
TOTALIZATOR EMPLOYEES AWARD 1993

Clerical employees

Clerical industry

COMMISSIONER LAWSON

SYDNEY, 2 AUGUST 1993

Wages and conditions

INTERIM AWARD

GENERAL

1 - TITLE

This award shall be known as the Totalizator Agency Board of Victoria Off Course Totalizator Employees Award 1993.

2 - INCIDENCE

(a) This award shall come into operation on and from the beginning of the first pay period to commence on or after 18 March 1993 and shall remain in force for a period of six months.

(b) This award shall be binding upon:

- (i) The Federated Clerks Union of Australia;
- (ii) this award applies to the whole of Victoria to the occupation of a person or persons or classes of persons employed in connection with the operation of an off course totalizator, other than persons employed in the maintenance of such a totalizator; and
- (iii) the Totalizator Agency Board of Victoria.

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3 - ARRANGEMENT

[3 amended by V007 V008; varied by PR906843 ppc 04Jul01]

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PART I - CASUAL EMPLOYEES

(Branch clerks, telephone betting clerks and head office clerks)

1 - DEFINITIONS

In this Part:

- (i) "Award" means the Totalizator Agency Board of Victoria Off Course Totalizator Employees Award 1993.
- (ii) "Commission" means the Australian Industrial Relations Commission.
- (iii) "Union" means The Federated Clerks Union of Australia.

2 - WAGES

[Pt I:2 substituted by V001 V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

(a) Casual employees are those employed by the hour and their rates of pay shall be:

	Percentage of adult rate %	Ordinary rate per hour \$	Penalty rate per hour \$	Sunday rate per hour \$	Public holiday rate per hour \$
Adult		16.36	27.05	28.07	33.89
At 20 years	100	16.36	27.05	28.07	33.89
At 19 years	90	14.72	24.35	25.27	30.50
At 18 years	80	13.09	21.64	22.46	27.11
At 17 years	70	11.45	18.94	19.65	23.73
At 16 years	60	9.82	16.23	16.84	20.34
Adult Telephone Betting Clerk in training (1 st week of employment)	90	14.72	24.35	25.27	30.50

Pt I:2 - contd

- (i) The calculations of the abovementioned rates shall be made to the nearest 1 cent, half a cent or less in a result to be disregarded.
- (ii) The ordinary rate per hour shall be payable for all times worked up to 8 a.m., up to a total of **thirty** hours in one week (Monday to Saturday inclusive).
- (iii) The penalty rate shall be paid:
 - (1) After **thirty** hours are worked at the ordinary rate in the week (i.e. Monday to Saturday inclusive).
 - (2) After 8 p.m. (Monday to Saturday inclusive).

Note: Incorporated in the hourly rate is an amount for annual leave calculated at one-twelfth of the hourly rate for all time worked.

Sundays and public holidays

- (b) (i) (1) Rate of pay for work on Sunday shall be \$28.07 per hour; and
- (2) Public holidays \$33.89 per hour.

These rates shall automatically be increased in direct proportion to movements in the normal hourly rate - currently \$16.36

- (ii) Staffing for public holidays and Sundays will continue to be in accordance with the race day and operational requirements. If these requirements change, resulting in all available operators not being rostered, TABCORP will consult with and advise the union of the reasons for the change prior to the event.
- (iii) Work on a Sunday shall be voluntary. Operators shall be able to make themselves unavailable for a particular Sunday and still be considered for future Sunday work. In the event that the staffing available to operate on a Sunday is insufficient to meet the demands of the business, TABCORP will enter into discussions with the union.
- (iv) All operators who volunteer for Sunday work will be rostered in such a manner that all employees have fair and equal access to such work over a twelve month period.
- (v) An operator who makes him/herself unavailable for a Sunday shift will be ineligible for work on the following day unless a satisfactory explanation is provided.

- (vi) TABCORP shall ensure that in relation to Sunday work:
 - (1) Full canteen facilities are provided;
 - (2) Tea breaks shall apply as per the award.
- (vii) Minimum shift lengths shall be in accordance with the award.
- (viii) Any disputes arising out of this matter shall be dealt with in accordance with clause 26 of this award.

Higher Duties Allowance

- (c) Casual employees called upon to perform the duties of Cash Control, Telephone Betting Race Day Assistants or Supervisors shall be paid for all such time worked, an additional amount of \$1.71 per hour.

Safety Net Adjustments

- (d) The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2002* decision [[PR002002](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

Federal Minimum Wage

- (e) i. No employee shall be paid less than the federal minimum wage.
- ii. Amount of federal adult minimum wage
 - (1) The federal minimum wage for full-time adult employees not covered by subclause 4 [special categories clause], is \$431.40 per week.
 - (2) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in subclause 2(a).

- (3) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause 2(a) according to the number of hours worked.
- iii. How the federal minimum wage applies to juniors
 - (1) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause 3(b) is greater.
 - (2) The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause 2.
4. Application of minimum wage to special categories of employee
 - (1) Due to the existing applicable award wage rates being greater than the relevant proportionate federal minimum wage, this clause has no application to employees undertaking a National Training Wage Traineeship, an Australian Traineeship, a Career Start Traineeship, a Jobskills placement or an apprenticeship.
 - (2) [Leave reserved for other special categories]
5. Application of federal minimum wage to award rates calculation

The federal minimum wage:

 - (1) applies to all work in ordinary hours;
 - (2) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
 - (3) is inclusive of the arbitrated safety net adjustment provided by the *Safety Net Review – Wages May 2002* decision [Print PR002002] and all previous safety net and national wage adjustments.

3 - HOURS OF WORK

- (a) Each engagement shall be a separate engagement.

Telephone betting

- (i) The minimum shift length for shifts commencing after 8.00 a.m. and concluding at or before 5.30 p.m. to be of four hours (twilight meetings excepted).

The minimum shift length for shifts commencing from 5.00 p.m. to be of three hours.

Cash offices

- (ii) (A) The minimum shift length for shifts commencing after 10.00 a.m. and concluding at or before 5.30 p.m. on Saturday to be of four hours in all branches.

(B) The minimum shift length for shifts commencing after 10.30 a.m. and concluding at or before 5.00 p.m. (Monday to Friday inclusive) to be of three hours duration in all branches.

(C) In all branches on public holidays the minimum shall be three hours.

- (b) (i) Where operations are abandoned, cancelled, postponed or suspended due to computer breakdown or other factors for which the employer cannot reasonably be held responsible and casuals have been rostered and attend work because they could not be notified in advance and cannot be usefully employed, such casuals shall be paid a minimum at the appropriate rate as for two hours worked.

- (ii) (A) Provided that casuals who have completed not less than one hour's work shall receive one hour's pay in addition to the minimum prescribed herein.

- (B) Or if casuals have worked in excess of two hours then such casuals shall receive one hour's pay in addition to payment for time actually worked.
- (C) It is further provided that at no time shall casuals be paid more than would have been paid had such casuals completed the normal rostered engagement.

(c) Excepting as outlined in subclause (b) hereof, casuals ready, willing and available who are rostered for a period of work and commence on that day shall receive payment at the appropriate rate for the whole of the period of such roster, unless the casuals have been notified by the previous day of a change in roster.

(d) A minimum of ten minutes shall be allowed operators for setting up and balancing purposes, and a period of between 30 minutes and 45 minutes shall be allowed manual payouts for setting up and balancing purposes.

(e) Females required to work overtime beyond 10.30 p.m. shall be provided with safe escort home.

For the purposes of this clause, overtime means time worked outside the rostered engagement.

4 - PAYMENT OF WAGES

(a) Wages and allowances up to and including Saturday shall be payable no later than the following Thursday.

(b) Employees shall be supplied on or before pay day with a statement in writing showing or from which may be calculated, the amount of ordinary pay, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

5 - MEAL ALLOWANCE

Casual employees shall be supplied with adequate meals where an employer has cooking and dining facilities or be paid meal money in addition to any other payment as follows:

[Pt I:5(i) varied by V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

- (i) when required to work more than nine consecutive hours (Monday to Saturday inclusive) - \$8.14. Provided that after a further four hours a further meal allowance of \$6.18 shall be paid; and
- (ii) on request meal money shall be paid on the same day as it becomes due.

6 - VEHICLE ALLOWANCE

[Pt I:6(a) varied by V009 from 27Jun98]

(a) Where the employer requires employees to use their own motor cars in the performance of their duties, such employees shall be paid an allowance of not less than 44 cents per kilometre travelled.

(b) Where the employer provides motor vehicles which are used by employees in the performance of their duties, all expenses including registration, running, and maintenance of such motor vehicles shall be paid by the employer.

7 - EXCESS FARES AND TRAVELLING TIME

(a) Employees who on any day are required to work at a place away from their usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from home to their usual place of employment and returning), shall be paid travelling time at appropriate rates and also any fares reasonably incurred in excess of those normally incurred in travelling between home and their usual place of employment.

(b) Where the employer provides transport from a pick-up point, employees shall be paid travelling time for all time spent travelling from such pick-up point and return thereto.

8 - UNIFORMS AND PROTECTIVE CLOTHING

Where uniforms and protective clothing are required to be worn they shall be provided and laundered by the employer. The employer shall provide protective clothing for employees engaged in work damaging to clothing.

9 - ACCIDENT MAKE-UP PAY

(a) An employer shall pay employees accident make-up pay where employees sustain injuries which qualify for compensation under the provisions of the Victorian Workers Compensation Act 1958.

(b) Accident make-up pay means that an employer shall pay employees the difference between the weekly amount of compensation received by employees and the weekly ordinary rate of pay at the time of the accident.

(c) The payment made by an employer shall be limited to a maximum period of 39 weeks for any one injury.

(d) Where an entitlement to accident make-up pay arises under this award any reference to the Victorian Workers Compensation Act 1958 shall be deemed to include a reference to the Accident Compensation Act 1992 and any reference to the Accident Compensation Act 1992 shall be deemed to include a reference to the Victorian Workers Compensation Act 1958.

10 - PUBLIC HOLIDAYS

[Pt I:10 varied by V002; substituted by V006 from 13Dec94]

(a) Public holidays shall be: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Melbourne Cup Day, Christmas Day and Boxing Day.

- (b) (i) When Christmas day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.
- (ii) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- (iii) When New Year's Day or Australia Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on the next Monday.

(c) Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in (a) and (b) above, those days shall constitute additional holidays for the purpose of this award.

- (d) (i) An employer, with the agreement of the Australian Services Union which is party to this award, may substitute another day for any prescribed in this clause.
- (ii) (1) An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.
- (2) An agreement pursuant to (1) shall be recorded in writing and be available to every affected employee.
- (3) The Australian Services Union which is party to this award shall be informed of an agreement pursuant to (1) and may within seven days refuse to accept it. The Australian Services Union will not unreasonably refuse to accept the agreement.
- (4) If the Australian Services Union, pursuant to (3), refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the Australian Services Union.

- (5) If no resolution is achieved pursuant to (4), the employer may apply to the Commission for approval of the agreement reached with his or her employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and the Australian Services Union an opportunity to be heard, the Commission will determine the application.

11 - TRADE UNION TRAINING LEAVE

- (a) (i) A union delegate or duly elected representative shall upon application in writing by the union be granted up to five days' leave with pay each calendar year, non-cumulative, to attend courses conducted or approved by the Australian Trade Union Training Authority.
- (ii) The notice to the employer affected by the leave 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.

(b) Leave shall be granted by agreement between the employer and the union and shall be subject to the employee or the union giving not less than one calendar month's notice of the intention to attend such course or such lesser period as may be agreed between the parties. Provided that such leave is not to be taken during the Spring Carnival period.

(c) Each employee on leave approved in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of leave. Ordinary time earnings mean the classification rate, supplementary payments (if any), overaward payments, casual loading, penalty rates (excluding overtime payments to weekly employees) and shift loading.

(d) In the event that a day off which accrues in accordance with the nineteen day, four week work cycle agreement falls within a period of leave granted pursuant to this clause that day shall be transferred to another week.

(e) Leave granted will not incur any additional payment to the extent that course attendance coincides with any other period of paid leave granted pursuant to this award.

(f) The employer shall not be required to pay the costs of travel to and from the place where such courses are conducted and/or any accommodation costs during such leave.

(g) Leave of absence granted pursuant to this clause shall count as service for all purposes of the award.

(h) Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the course of the nature of the course and their observations on it.

Pt I:11 – contd

(i) On completion of the course the employee shall, upon request, provide to the employer proof satisfactory to the employer of their attendance at the course.

(j) Employees who have completed a minimum of six months' continuous service with the TAB shall be eligible for leave pursuant to this clause.

12 - MEAL AND REST PERIOD

(a) No employee shall be required to work for more than five hours without a meal break of 30 minutes. No employee who works a shift between the hours of 8.00 a.m. to 5.30 p.m. or 5.00 p.m. to close of business shall be required to work more than 2-1/2 hours without a paid rest period of fifteen minutes for the former and ten minutes for the latter; provided that these periods may be taken.

(b) The employee shall not be required to work during such rest periods.

13 - FACILITIES

The employer shall provide crockery, and facilities to enable employees to obtain boiling water.

14 - AMENITIES

First-aid kit

(a) In all establishments in which persons are employed the employer shall provide and continuously maintain at some conspicuous and easily accessible place a dust-proof first-aid outfit containing such items, and quantities thereof, as are prescribed in the Industrial Safety Health and Welfare (General Safety) Regulations 1982 (see Explanatory Note at end of this award).

Ventilation, lighting, toilet and washing facilities

(b) The employer shall ensure that adequate ventilation, lighting, toilet and washing facilities are provided in accordance with the Labour and Industry Act and Regulations.

Heating and cooling

(c) Subject to the requirements of Regulation 39 of the Labour and Industry (Factories, Shops, Offices and Warehouses) Regulations, 1965 which provides that an office building shall be provided with suitable means and appliances for warming it to a temperature of 65 degrees F, the Commission determines that in summer the employer shall provide suitable means and appliances for cooling as will ensure reasonable working conditions.

Seating

(d) Where opportunities exist for employees to sit, from time to time, without detriment to their work, suitable seats shall be provided to enable them to take advantage of these opportunities.

Drinking water

(e) In every office a continuous supply of clear wholesome water for drinking shall be provided. The drinking water provided shall be cool enough to be palatable and if the temperature of the water at the point of delivery rises above 75 degrees F some means of cooling shall be provided.

Floor coverings

(f) Where an employee is required to work for a period exceeding half an hour on a floor of concrete, stone or similar material, the employer shall provide suitable floor covering or other insulating material.

Overcrowding

(g) Attention is drawn to Clause 96 (2) of the Labour and Industry Act which reads:

"The occupier of a shop shall not permit or suffer it or any part thereof to be at any time so overcrowded as to be dangerous or injurious to the persons of employees therein."

15 - TIME AND WAGES RECORDS

The employer shall keep time and wages records showing the names of all employees, the hours worked each day, and the gross wages paid each week. The time and wages records shall be open for inspection to a duly accredited official of the union during the usual office hours at the employer's office, or other convenient place, with reasonable notice.

16 - RIGHT OF ENTRY

(a) An official of the union, duly identified by TAB Security Pass, shall be permitted to enter the employer's premises for the purpose of interviewing employees on legitimate union business.

(b) The employer shall recognise stewards appointed by the union and shall allow them reasonable time to perform their official duties as outlined in the union rule book.

(c) Provided that there is no interference with work in the employer's establishment.

17 - NOTICE BOARDS

In each establishment there shall be installed in a prominent place a notice board on which shall be displayed at all times a current copy of this award and official union notices, as authorised by the State secretary of the union.

18 - VACANCIES

When any position covered by this award becomes vacant such vacancy shall be notified throughout the Totalizator Agency Board's offices, branches and agencies. Preference in filling such vacancy shall be for employees who are registered with the Totalizator Agency Board, its branches or agencies.

19 - TECHNOLOGICAL CHANGE

Definitions

- (a) For the purpose of this clause:
- (i) "Technological change" means the introduction, alteration or replacement of computers (including word processing machines), or work practices ancillary to the use of such equipment, which change, if implemented by the employer, may have material effects in or on the employment of persons to which this award applies.
 - (ii) "Computer" means an electronic device (including word processing machines) which is capable of receiving facts or data, processing or performing calculations on that data and delivering answers or information in the required format for use by a person or to control the operations of another machine or computer.
 - (iii) "Material effects" means the termination of employment, the elimination or diminution of job opportunities, promotional opportunities, job tenure or the use of skills, the alteration of hours of work, and the need for retraining or transfer of employees to other work or locations.

Notification

(b) When the employer instructs or commissions employees, computer consultants or suppliers or any other persons to carry out an investigation of the feasibility of technological change or where the employer personally commences such an investigation, the following persons shall be notified:

- (i) the secretary of the union; and

Pt I:19(b) – contd

- (ii) in any case where the employer is able to identify the employees who may be materially affected in their employment by the change, those employees; that the investigation is being undertaken, and specify the employer's principal objective or objectives of such investigation.

Consultation during feasibility investigation

- (c) During the course of any feasibility investigation the employer shall:
 - (i) keep the union and the employees who have been notified informed of; and
 - (ii) when requested in writing by the union or by such employees or any of them to do so, consult with them about any technological change being considered, any material effect which might ensue and alternative proposals which might eliminate or lessen such effects.

Decision to implement

- (d) (i) If the employer decides to implement technological change, the union and the employees who may be materially affected in their employment by the change, shall be notified as soon as possible thereafter.
- (ii) After notifying the decision the employer will inform the union, and the employees who have been notified, of the nature and extent of likely material effects, will consult with them about the proposed change, the reasons for it and any alternative proposals which, if implemented might eliminate or lessen likely material effects.

Information

(e) In providing information to the employees and the union the employer will indicate the source thereof and provide such technical data as will allow evaluation of the likely material effects of any proposal for technological change. The information provided pursuant to this clause shall not be divulged to any other employer nor be used for any purpose other than the making of the said evaluation.

Method of notification

- (f) (i) All notifications and information to the union will be addressed in writing to the secretary of the union or to such other officials thereof as is designated by the said secretary.
- (ii) All notification and information to employees shall be in writing.

Consultation

(g) All consultation between the union and the employer will take place at the employer's place of business during the usual office hours at such time or times as are agreed upon, or in the absence of agreement, as are specified by the employer.

20 - STAND DOWN

(a) Employees may not be stood down unreasonably, or suspended for disciplinary reasons, without the right of having been given the opportunity for the union to appear on their behalf if they so desire.

(b) Failing agreement on the matter it will be referred to the Commission whose decision will be accepted and adhered to by all the parties.

21 - STAFFING OF BRANCHES

(a) The employer shall ensure adequate staffing for the work to be done.

(b) Not more than one junior to any two or fraction of two adult employees may be employed in any establishment.

22 - CASH HANDLING AND SECURITY

(a) Employees required to handle cash shall be given adequate lockable cash storage facilities to which they shall have exclusive access between the time of accepting responsibility on commencing and final balance at completion of the engagement.

(b) It shall not be a condition of employment for juniors under eighteen years of age to engage in cash business with the public.

23 - BANK DEPOSITS AND/OR WITHDRAWALS

All employees shall be provided with a suitable adult escort when required to attend a banking institution for the purposes of depositing or withdrawing cash in excess of \$200.00.

24 - SPECIAL CONDITIONS

No employee of any Totalizator Agency Branch covered by this award shall be required to work alone in any branch on any day during the hours the Branch is open for business with members of the public.

25 - DISPUTES OF FACT

Any disputes of facts concerning any provision of this award shall be determined by a notification to the Australian Industrial Relations Commission in the first instance.

26 - DISPUTES PROCEDURE

(a) Should any matter arise which gives cause for concern to employees they shall raise such matter with management or shop steward who will consult each other with a view to resolving the issue.

(b) If the matter remains unresolved it may be referred to the branch secretary of the union (or accredited representative). This officer shall discuss it with a senior representative of management.

(c) If the matter remains unresolved it shall be referred to such higher levels of the union and management as may be appropriate. In the case of the union this may involve the national secretary or their nominee.

(d) If the matter remains unresolved it may be submitted to the Australian Industrial Relations Commission for resolution.

(e) The parties shall at all times confer in good faith and without undue delay.

(f) While the above procedure is being followed, work shall continue normally except in cases where a bona fide issue is an immediate and dangerous situation to employees. Provided that, where employees cease work in an immediate and dangerous situation such employees will be transferred to other duties.

(g) If the provisions of subclauses (a), (b), (c) and (d) hereof all fail to resolve the dispute, then the parties reserve the right to pursue such action as considered necessary.

(h) No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

26A - PARENTAL LEAVE

[26A inserted by PR906843 ppc 04Jul01]

(a) (i) The provisions of this clause apply to eligible casual employees, but do not apply to other casual employees.

(ii) Subject to the terms of this clause eligible casual employees are entitled to maternity, paternity and adoption leave and to return to work on a different shift availability in connection with the birth or adoption of a child.

(iii) An “eligible casual employee” means a casual employee:

(A) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and

26A - contd

- (B) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- (iv) For the purposes of this clause, “continuous service” is work for an employer on a regular and systematic basis (including any period of authorised leave of absence).
- (v) An employer must not fail to re-engage a casual employee because:
 - (A) the employee or employee’s spouse is pregnant; or
 - (B) the employee is or has been immediately absent on parental leave.
- (vi) The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

Definitions

- (b) (i) For the purpose of this clause “child” means a child of the employee under the age of one year except for adoption of a child where ‘child’ means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) Subject to subclause 26A(b)(iii), in this clause “spouse” includes a de facto or former spouse.
- (iii) In relation to subclause 26A(g), “spouse” includes a de facto spouse but does not include a former spouse.

Basic entitlement

- (c) (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (ii) Subject to subclause 26A(e), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (A) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (B) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

Maternity leave

- (d) (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (A) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;
 - (B) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least 4 weeks.
- (ii) When the employee gives notice under subclause 26A(d)(i)(A), the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- (iv) Subject to subclause 26A(c)(i) and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

Special maternity leave

- (e) (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- (ii) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any unpaid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

26A - contd

- (iii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of unpaid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- (iv) Where leave is granted under subclause 26A(d)(iv), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

Paternity leave

- (f) (i) An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave:
 - (A) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
 - (B) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
 - (C) a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of a child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- (ii) The employee will not be in breach of subclause 26A(f)(i) if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

Adoption leave

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

26A - contd

- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (A) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (B) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (C) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (v) An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

Variation of period of parental leave

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

Parental leave and other entitlements

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

Transfer to a safe job

- (j) (i) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

Returning to work after a period of parental leave

- (k) (i) An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause 26A(j), the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

Replacement employees

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

Different shift availability work

- (m) For the purposes of this subclause:
 - (i) "Former position" means the position held by the employee immediately before proceeding on leave or a period of different shift availability under this subclause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

26A - contd

- (ii) “Different shift availability” means a different availability to work rostered shifts than the availability notified by the employee to the employer prior to the taking of parental leave.

Entitlement to return to work on a different shift availability

(n) With the agreement of the employer an employee whose former position was as an eligible casual employee, may return to work on a different shift availability in one or more periods at any time from the seventh week after the date of birth or the placement of the child until its second birthday.

Return to former position

- (o) (i) An employee who has had at least twelve months' continuous service with an employer immediately before commencing a period of different shift availability after the birth or placement of a child has, at the expiration of the period of such different shift availability or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in subclause 26A(o)(i) shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of different shift availability.

Effect of different shift availability employment on continuous service

(p) An employee's commencement on different shift availability under subclause 26A(n), and return from different shift availability to his or her former position under subclause 26A(o), shall not break the employee's continuity of service of employment.

Different shift availability agreement

- (q) (i) Before commencing a period of different shift availability employment under subclause 26A(n), the employee and the employer shall agree:
 - (A) that the employee may work on a different shift availability; and
 - (B) upon the period of different shift availability employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (iv) The terms of this agreement shall apply to the different shift availability employment.

Termination of employment

(r) The employment of an employee on different shift availability under subclause 26A(n), may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under subclauses 26A(n) and (o) or has enjoyed or proposes to enjoy any benefits arising under subclauses 26A(n) and (o).

Nature of different shift availability work

(s) The work to be performed on a different shift availability need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

27 - AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(a) It is open to the employer and employees covered by this award to reach agreement to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such agreements may involve a variation in the application of award provisions in order to meet the requirements of the employer and their employees. Agreements may be negotiated and consequential award variations processed in accordance with the provisions of subclause (b) hereof.

(b) The union is prepared to discuss all matters raised by the employer and employees within the enterprise. Enterprise agreements may be concluded, subject to the following conditions:

- (i) the majority of employees must genuinely agree;
- (ii) no employees will lose income as a result of the change i.e. no negative offsets;

- (iii) any agreement must be approved by the union. Where enterprise level discussions are considering matters requiring any award variation, the union must be invited to participate;
- (iv) the union shall not withhold such approval unreasonably;
- (v) agreements involving variation to award standards shall come into effect upon approval by the Australian Industrial Relations Commission and shall be referred to in a schedule to this award after such approval.

Schedule 1 - Sportsphone

[Pt I:Sched 1 inserted by V008 from 02Apr96]

Agreement between TABCORP Holdings Limited and the Australian Services Union arising from the relocation of Sportsphone from the Box Hill Telephone Betting Centre to 1 Queens Road, Melbourne

This agreement shall apply to all existing Telephone Betting Operators/Race Day Assistants who undertake shifts in the Sportsphone operations of TABCORP hereafter referred to as relevant employees.

1. All relevant employees shall have the right to return to Telephone Betting only duties. Such transfer shall occur as soon as practicable after the request, having regard to the availability of trained Sportsphone personnel.

2. Telephone Betting Operators/Race Day Assistants who undertake shifts in the Sportsphone operation of Tabcorp shall continue to work such shifts as part of their principal overall employment as Telephone Betting operators and shall continue to receive shifts, including double shifts where applicable, according to their availabilities as do all other Telephone Betting operators.

3. No relevant employee will be rostered to work a shift at both the Box Hill and Queens Road facilities on the same day except by request of the employee.

4. Relevant employees are eligible to use the Racing Industry Centre car park during off-peak times, ie after 5.00 p.m. Monday to Friday, and on weekends and public holidays. A fee per vehicle is charged for casual car parking - currently \$2 per entry and as varied from time to time in accordance with the Tabcorp Human Resources Policy Manual. Where an employee is required to move his or her vehicle during working hours, he or she shall be provided with reasonable opportunity to do so, provided that it is at such time that there is no impact on the operation of the business.

5. Regard shall be had for employees who utilise commercial parking car facilities within close proximity to Tabcorp and who during those shifts which extend into the evening, exercise their option to subsequently use the Racing Industry Centre car park. In these situations, Tabcorp shall have regard to monies already paid for car parking when charging for the use of the Racing Industry Centre car park.

Provided that this clause shall apply to relevant employees engaged within six months from 12 March 1996, and shall be subject to review for all relevant employees engaged on or after 12 September 1996.

6. The parties reserve the right to re-negotiate the Agreement in the event of a material change on these issues, and in the event of a dispute, the parties should refer the matter to the Australian Industrial Relations Commission in accordance with the disputes procedure.

7. This Agreement shall be reviewed as soon as practicable after 31 December 1996.

PART II - ADMINISTRATION CLERKS

(Clerical employees engaged to normally work five days per week
between Monday and Saturday inclusive in Head Office
Administration Business Group)

28 - DEFINITIONS

In this Part:

- (i) "Award" means the Totalizator Agency Board of Victoria Off Course Totalizator Employees Award.
- (ii) "Commission" means the Australian Industrial Relations Commission Board.
- (iii) "Union" means The Federated Clerks Union of Australia.

29 - WAGES

[Pt II:29(a) substituted by V001 V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

(a) Rates of pay shall be:

Years of adult service	Grade 1	Grade 2	Grade 3	Grade 4
	Records Assistant Records Clerk Audit Clerk Stock Records Clerk Race Day Clerk Stenographer Accounting Machinist Switchboard Operator Typist Clerk Typist Receptionist Cost Clerk Payroll Clerk Photocopy Clerk Clerk - General Liaison Officer Data Control Clerk Fault Control Clerk	Payroll Officer Supply Officer Reconciliation Clerk Creditors Control Officer Claims Officer Transport Supervisor Administration Assistant - Operations Asset Register Clerk Debtors Control Officer Stock Control Officer	Records Supervisor	Projects Officer Budget Officer Statistical Analyst
	Per Annum \$	Per Annum \$	Per Annum \$	Per Annum \$
1	25,438	27,346	29,631	32,736
2	26,047	27,937	30,235	33,354
3	26,648	28,427	30,837	33,957
4	27,346	29,029	31,428	34,536
5	27,937	29,631	32,035	-
6	-	30,235	32,736	-
7	-	-	33,354	-

Juniors

Age	Percentage of adult 1 st year of appropriate grade
16 years and under	60

17 years	70
18 years	80
19 years	90
20 years	100

Pt II:29(a) - contd

- (i) The minimum rates of pay for adult employees commencing employment shall be that prescribed for the first year in their grades, and they shall then progress annually to the next increment, in their grade until the top of their grades have been reached.
- (ii) On promotion employees must progress to their next higher increment in their new grades over their existing salaries and thereafter transfer annually until the top of their grades have been reached.
- (iii) Employees shall be advised individually in writing of their grades under this award.
- (iv) The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2002* decision [[PR002002](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

- (v) Federal Minimum Wage
 - 1. No employee shall be paid less than the federal minimum wage.
 - 2. Amount of federal adult minimum wage
 - (a) The federal minimum wage for full-time adult employees not covered by subclause 4 [special categories clause], is \$431.40 per week.
 - (b) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in subclause 2(a).
 - (c) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause 2(a) according to the number of hours worked.

Pt II:29(a) - contd

3. How the federal minimum wage applies to juniors
 - (a) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause 3(b) is greater.
 - (b) The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause 2.
4. Application of minimum wage to special categories of employee
 - (a) Due to the existing applicable award wage rates being greater than the relevant proportionate federal minimum wage, this clause has no application to employees undertaking a National Training Wage Traineeship, an Australian Traineeship, a Career Start Traineeship, a Jobskills placement or an apprenticeship.
 - (b) [Leave reserved for other special categories]
5. Application of federal minimum wage to award rates calculation

The federal minimum wage:

- (a) applies to all work in ordinary hours;
- (b) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (c) is inclusive of the arbitrated safety net adjustment provided by the *Safety Net Review – Wages May 2002* decision [Print PR002002] and all previous safety net and national wage adjustments.

Higher duties allowance

- (b) Adult employees called upon to perform continuously for one week or more the whole of the work of other employees in higher grades shall be paid for all such time worked at:
 - (i) the minimum rates of pay prescribed for those higher grades; or
 - (ii) the rates prescribed for those higher grades which are next higher than the award rate applicable to the relieving employees in their substantive grades whichever are the higher; provided that such employees shall not be paid during such periods at lower rates than those prescribed for their existing ordinary hours of work.

Withholding of advancement

- (c) (i) When reasonable cause exists, an employer may withhold advancement to the next incremental level of a grade or may reduce by one level of the grade for unsatisfactory job performance or disciplinary reasons, for a period of time not exceeding twelve months.
- (ii) Provided that at all times employees may appeal their cases through the grievance procedure and ultimately reference of the matter may be made to the Commission.
- (iii) And provided further where the employer intends to withhold or reduce an increment because of unsatisfactory job performance or disciplinary reasons, the State secretary of the union will be notified of this intention.

30 - HOURS OF WORK

The ordinary hours of work per week shall be 38 worked between 7.30 a.m. and 8.00 p.m. Monday to Saturday (inclusive).

31 - TERMS OF EMPLOYMENT

(a) Full-time employees are those who are engaged as such and who are ready, willing and available to work a full week of 38 hours and shall be paid the full weekly wage fixed herein (irrespective of the number of hours worked not exceeding the standard hours prescribed by the nineteen day, four week working cycle).

(b) Part-time employees are those who are engaged as such, on terms and conditions as agreed between the employer and the union and who are ready, willing and available to work according to these agreed terms and conditions.

- (c) Provided that:
 - (i) no existing employees will be disadvantaged by the introduction of part-time employment;
 - (ii) part-time employees will be drawn from amongst current employees in the first instance;
 - (iii) the employees must genuinely agree to the terms and conditions;
 - (iv) no existing employees will suffer a reduction in the average weekly hours of work or income as a result of the introduction of part-time employment;
 - (v) the union will not unreasonably oppose any agreement; and
 - (vi) part-time employees shall be rostered to work regular hours on regular days.

32 - SHIFT WORK

Definitions

- (a) For the purpose of this clause:
 - (i) "Day shift" means any shift commencing not earlier than 7.30 a.m. and finishing at or before 8.00 p.m.
 - (ii) "Afternoon shift" means any shift finishing after 8.00 p.m. and at or before midnight.

Shift work allowance

- (b) For the ordinary hours of a shift, employees engaged on afternoon shift shall be paid in addition to their ordinary rates of pay, an additional 20 per cent for such shifts.

33 - OVERTIME

- (a) Employees working:
 - (i) within the hours fixed in clause 30 of this award in excess of hours fixed for an ordinary week's work, (other than any additional hours worked to effect a nineteen day, four week work cycle);
 - (ii) outside the hours prescribed by an applicable shift roster;
 - (iii) on a shift other than a rostered shift;

shall be paid at time-and-one-half for the first three hours and double time thereafter calculated from the normal finishing time on a daily basis.

For the purpose of administering the provisions contained herein, the minimum period for which employees shall be paid overtime shall be one-half hour per week.

- (b) An employer may require any employees to work reasonable overtime at overtime rates and such employees shall work overtime in accordance with such requirements subject to the following:

- (i) that junior employees shall be given on the day in question means of notifying their parents or guardians that they are so required to work;
- (ii) where any female employees work overtime beyond 8.00 p.m. the employer shall provide them with transport to their usual place of residence if they so require; and

Pt II:33(b) – contd

- (iii) reasonable notice shall be given to all employees regarding the working of overtime.

(c) When employees finish a period of overtime they shall be released until they have had ten consecutive hours off duty without loss of pay for their ordinary working time occurring during such absences. If they resume without having ten hours off duty they shall be paid overtime at double rates until they have had ten hours off duty.

34 - STANDING BY

Subject to any custom now prevailing under which employees are required regularly to hold themselves in readiness for a return to duty, employees required to hold themselves in readiness to work after ordinary hours shall until released be paid standing-by time at ordinary rates from the time they are so to hold themselves in readiness.

35 - PAYMENT OF WAGES

Wages, overtime and allowances shall be paid during working hours not later than Thursday in each pay week. When Friday is a public holiday, payment shall be made not later than Wednesday in that week. On request an employee shall be supplied on or before pay day with a statement in writing showing or from which may be calculated the amount of ordinary pay, overtime, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

36 - MEAL ALLOWANCE

[Pt II:36 varied by V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

Employees shall be supplied with adequate meals where an employer has cooking and dining facilities or be paid meal money in addition to any overtime payment as follows:

- (i) when required to work not less than one hour of overtime on rostered days - \$8.14. Provided that where such overtime exceeds four hours a further \$6.18 shall be paid;
- (ii) when required to work more than five hours overtime on a rostered day off or Sunday - \$8.14 and a further \$6.18 when required to work more than nine hours on such day;
- (iii) these foregoing provisions shall not apply where employees could reasonably return home for meals within the period allowed; and
- (iv) on request meal money shall be paid on the same day as overtime is worked.

37 - VEHICLE ALLOWANCE

[Pt II:37(a) varied by V009 from 27Jun98]

(a) Where the employer requires employees to use their own motor cars in the performance of their duties, such employees shall be paid an allowance of not less than 44 cents per kilometre travelled.

(b) Where the employer provides motor vehicles which are used by employees in the performance of their duties, all expenses including registration, running and maintenance of such motor vehicles shall be paid by the employer.

38 - LIVING AWAY FROM HOME ALLOWANCE

Employees required by their employer to work temporarily away from their usual place of employment, and who are required thereby to sleep away from their usual place of residence, shall be entitled to the following:

- (i) first class fares to and from the place at which their employer requires the employees to work, when transport is not provided;
- (ii) all necessary expenses incurred for board and lodging; and
- (iii) payment of ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location.

39 - UNIFORMS AND PROTECTIVE CLOTHING

Where uniforms and protective clothing are required to be worn, they shall be provided and laundered by the employer. The employer shall provide protective clothing for employees engaged in work damaging to clothing.

40 - ACCIDENT MAKE-UP PAY

(a) An employer shall pay employees accident make-up pay where employees sustain injuries which qualify for compensation under the provisions of the Victorian Workers Compensation Act 1958.

(b) Accident make-up pay means that an employer shall pay employees the difference between the weekly amount of compensation received by employees and the weekly ordinary rate of pay at the time of the accident.

(c) The payment made by an employer shall be limited to a maximum period of 39 weeks for any one injury.

(d) Where an entitlement to accident make-up pay arises under this award any reference to the Victorian Workers Compensation Act 1958 shall be deemed to include a reference to the Accident Compensation Act 1992 and any reference to the Accident Compensation Act 1992 shall be deemed to include a reference to the Victorian Workers Compensation Act 1958.

41 - RETURN TO DUTY

Employees required to return to duty after the usual finishing time for that day shall be paid from the time of notification until the time of return to their places of residence at the overtime rates prescribed in clause 33 hereof but shall receive a minimum payment as for three hours work. Provided that this clause shall not apply where the work is continuous (subject to a meal break of not more than one hour) with the completion or commencement of scheduled working time.

42 - PUBLIC HOLIDAYS

[Pt II:42 varied by V002; substituted by V006 from 13Dec94]

(a) Employees covered by this part of the award who are not required to work shall be entitled to the following public holidays without loss of pay: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labor Day, Anzac Day, Queen's Birthday, Melbourne Cup Day, Christmas Day and Boxing Day.

- (b) (i) When Christmas day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.
- (ii) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- (iii) When New Year's Day or Australia Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on the next Monday.

(c) Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in (a) and (b) above, those days shall constitute additional holidays for the purpose of this award.

- (d) (i) An employer, with the agreement of the Australian Services Union which is party to this award, may substitute another day for any prescribed in this clause.
- (ii) (1) An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.
- (2) An agreement pursuant to (1) shall be recorded in writing and be available to every affected employee.

- (3) The Australian Services Union which is party to this award shall be informed of an agreement pursuant to (1) and may within seven days refuse to accept it. The Australian Services Union will not unreasonably refuse to accept the agreement.
- (4) If the Australian Services Union, pursuant to (3), refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the Australian Services Union.
- (5) If no resolution is achieved pursuant to (4), the employer may apply to the Commission for approval of the agreement reached with his or her employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and the Australian Services Union an opportunity to be heard, the Commission will determine the application.

43 - SPECIAL RATES FOR SUNDAYS AND PUBLIC HOLIDAYS

- (a) All work done shall be paid for as follows:
 - (i) on a holiday or a substituted day as provided in clause 42 of this award - double time-and-one-half;
 - (ii) on a Sunday - double time.

Provided that employees required to work on a Sunday or a holiday or substituted day as provided in clause 42 of this award shall be entitled to not less than four hours pay at special rates provided they are available for working during such four hours; and

Special rates - Sunday racing

- (iii) notwithstanding the rates of pay specified herein for work performed on Sundays, the following rates of pay shall apply to work performed on Sunday race days.

	Grade I \$ Per Hour	Grade II \$ Per Hour	Grade III \$ Per Hour	Grade IV \$ Per Hour
1	26.04	28.32	31.33	35.11
2	26.81	29.06	32.09	35.89
3	27.57	29.81	32.85	36.65
4	28.32	30.57	33.59	37.38
5	29.06	31.33	34.35	-
6	-	32.09	35.11	-
7	-	-	35.89	-

(b) An employee shall be paid the rate of pay equal to their classification and increment at the time the work is performed.

(c) The above rates shall remain fixed until such time as the rates are equal to double the normal rates from which time double time shall be the appropriate rate for all Sunday work.

(d) In addition, the following conditions shall apply:

- (i) work on a Sunday shall be voluntary. Employees shall be able to make themselves unavailable for a particular Sunday and still be considered for future Sunday work. In the event that the staffing available to operate on a Sunday is insufficient to meet the demands of the business the TAB will enter into discussions with the union; and
- (ii) all employees who volunteer to work on a Sunday must be rostered on a rotating basis so that all employees have fair and equal access to Sunday work.

44 - ANNUAL LEAVE

Entitlement

- (a)
 - (i) Except as otherwise provided in this award, all employees shall at the end of each year of their employment by an employer, become entitled to four weeks annual leave on ordinary pay.
 - (ii) The annual leave shall be given and taken in four consecutive weeks, or if the employees and the employer agree, in such other periods as may be mutually agreed.
 - (iii) If the employees and the employer so agree the annual leave may be taken wholly or partly in advance before the employees have become entitled to the annual leave.
 - (iv) The annual leave shall be given by the employer and shall be taken by the employees before the expiration of a period of twelve months after the date upon which the right to such leave accrues: provided that the giving and taking of the whole of any separate period of such annual leave may, with the consent in writing of the chief industrial officer of the Department of Labour, be postponed for a period to be specified in any case where the chief industrial officer is of the opinion that circumstances render such postponement necessary or desirable.

Pt II:44(a) – contd

- (v) Except as provided in subclause (b) hereof, payment shall not be made by an employer to any employees in lieu of any annual leave or part thereof to which employees are entitled under this award, nor shall any such payment be accepted by employees.
- (vi) (A) Except in the case of mutual consent to the contrary the employer shall give individual employees at least one month's notice of the date from which their annual leave shall be taken.

(B) The employer shall pay individual employees their ordinary pay for the annual leave, in advance before the commencement of their leave.
- (vii) Where the annual leave or any part thereof has been taken before the right to the annual leave has accrued, the right to further annual leave shall not commence to accrue until after the expiration of the year of employment in respect of which the annual leave or part thereof has been so taken.
- (viii) Where public holidays for which employees are entitled to payment under this award or under their contracts of employment occur during any period of annual leave taken by employees under this clause, the period of the leave shall be increased by one day in respect of each public holiday.

Payment on termination

- (b) (i) Where the employment of employees who have become entitled to one or more annual leave periods provided by this award is terminated, the employer shall be deemed to have given the leave (except so much, if any, as has already been taken) to those employees as from the date of termination of their employment, and shall forthwith pay to them, in addition to all other amounts due, their ordinary pay for the period of that leave.
- (ii) Paragraph (i) hereof applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the employees concerned continue to be entitled (apart from this clause) to take it, and so applies as if the employees' rights to take it had accrued immediately before the date of the termination of employment.
- (iii) Nothing in paragraphs (i) or (ii) hereof affects the obligation of an employer to give, or employees to take, annual leave in accordance with this award.

- (iv) (A) This subclause applies with respect to every period of employment of employees by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the employees have during employment become entitled to any annual leave under the last preceding subclause) computed from the date upon which they became entitled to that annual leave, or to the last annual leave as the case maybe.
- (B) Where the employment of individual employees by any employer is terminated at the end of a period of employment to which this subclause applies, the employer shall forthwith pay to those employees, in addition to all other amounts due to them, an amount equal to 1/12th of their ordinary pay for that period of employment.
- (v) Where the annual leave under subclause (a) hereof or any part thereof has been taken in advance by employees pursuant to paragraph (a)(iii) hereof and:
 - (A) the employment of the employees is terminated before they have completed the year of employment in respect of which such annual leave or part was taken; and
 - (B) the sum paid by the employer to the employees as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the employees under paragraph (iv) hereof; the employer shall not be liable to make any payment to the employees under paragraph (iv) hereof and shall be entitled to deduct the amount of such excess from any remuneration payable to the employees upon termination.
- (vi) For the purposes of the two last preceding subclauses:
 - (A) "Ordinary pay" in relation to any employees means remuneration for the employees' normal weekly number of hours of work calculated at the ordinary time rate of pay and where the employees are provided with board or lodging by their employer, includes the cash value of that board or lodging.
 - (B) "Week" in relation to any employees means the employees' ordinary working week.
 - (C) "Employees" means any persons employed by any employer to do any work for hire or reward.

Continuity of service

(c) For the purposes of this award a year of employment shall be deemed to be unbroken notwithstanding:

- (i) any annual leave or long service leave taken therein;
- (ii) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;
- (iii) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;

(iv) any absence on account of leave (other than annual leave or long service leave) granted, imposed or agreed to by the employer; and

(v) any absence on any other account not involving termination of employment; and in calculating a year of employment any absence of a kind mentioned in paragraphs (i), (ii) or (iii) hereof shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (iv) and (v) hereof it will be necessary for the employees as part of their qualification for annual leave to serve such additional period as equals the period of such absences.

[Pt II:44(d) inserted by V003 ppc 23Dec93]

(d) In addition to the annual leave payment prescribed above, employees shall receive an annual leave loading of seventeen-and-one-half per cent. Provided that the loading shall only be payable in respect of a maximum of four weeks annual leave in any one year.

45 - SICK LEAVE

(a) Any employees other than casual employees who having had at least three months' service with the same employer are absent from duty as a result of personal ill-health or accident shall be entitled to minimum sick pay as follows:

- (i) during the first year - 3-1/6 hours' ordinary pay for each complete month of service; and
- (ii) during any subsequent year of service - 76 hours' ordinary pay.

Provided that in either case such employees produce or forward within 48 hours of the commencement of such absences evidence satisfactory to the employer that their non-attendance was due to personal ill-health or accident necessitating such absences.

(b) (i) If the sick leave as prescribed above is not taken in any year, it shall, provided employees remain in the service of the one employer or any successor of such employer, be cumulative from year to year.

- (ii) No employer shall terminate the services of any employees during the currency of any periods of sick leave with the object of avoiding any obligations under this clause.

- (c) Provided that existing practices shall continue.

45A - FAMILY LEAVE

[45A inserted by V007 ppc 13Apr95]

A. Use of sick leave

1. An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement which accrues after the date of this order for absences to provide care and support for such persons when they are ill.
2. The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
3. The entitlement to use sick leave in accordance with this sub-clause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being either:
 - (a) a member of the employees immediate family; or
 - (b) a member of the employees household.
 - (iii) The term immediate family includes:
 - (a) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (b) a child or an adult child (including an adopted child, a step-child or an ex-nuptial child), parent, grand parent, grand child, or sibling of the employee or spouse of the employee.

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

B. Unpaid leave for family purpose

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

C. Annual leave

1. Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.
2. Access to annual leave, as prescribed in paragraph C (1) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
3. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

D. Time off in lieu of payment for overtime

1. An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
2. Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
3. An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under paragraph D(1) of this sub-clause where such time has not been taken within four weeks of accrual.

E. Make-up time

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

F. Grievance Process

1. In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this award.

46 - COMPASSIONATE LEAVE

Individual employees shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law or father-in-law, be entitled on notice to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employees in three ordinary days' work. Proof of such death shall be furnished by the employees to the satisfaction of their employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause, the word "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a de facto wife or husband.

47 - PARENTAL LEAVE

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

(A) MATERNITY LEAVE

Nature of leave

- (a) Maternity leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
 - (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Paternity leave" means leave of the type provided for in subclause (B) whether prescribed in an award or otherwise;
 - (iii) "Child" means a child of the employee under the age of one year;
 - (iv) "Spouse" includes a de facto or a former spouse; and
 - (v) "Continuous service" means service under an unbroken contract of employment and includes:

- (A) any period of leave taken in accordance with this subclause;
- (B) any period of part-time employment worked in accordance with this subclause; or
- (C) any period of leave or absence authorised by the employer or by the award.

Eligibility for maternity leave

(c) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave. The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

Certification

(d) At the time specified in subclause (e) hereof the employee must produce to her employer:

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

Notice requirements

- (e) (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i) hereof.
- (ii) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii) hereof.

- (iii) An employer by not less than fourteen days' notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this subclause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

Transfer to a safe job

- (f) (i) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k) and (l) hereof.

Variation of period of maternity leave

- (g) (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (A) the period of maternity leave may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

- (h) (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special maternity leave and sick leave

- (i) (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (A) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (B) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

Maternity leave and other leave entitlements

- (j) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

Effect of maternity leave on employment

(k) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (l) (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after maternity leave

- (m) (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

Replacement employees

- (n) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(B) PATERNITY LEAVE

Nature of leave

- (a) Paternity leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
 - (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Maternity leave" means leave of the type provided for in subclause (A) (and includes special maternity leave) whether prescribed in an award or otherwise;
 - (iii) "Child" means a child of the employee or the employee's spouse under the age of one year;
 - (iv) "Spouse" includes a de facto or a former spouse;
 - (v) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child; and
 - (vi) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;

- (B) any period of part-time employment worked in accordance with this subclause; or
- (C) any period of leave or absence authorised by the employer or by the award.

Eligibility for paternity leave

(c) A male employee, upon production to his employer of the certificate required by subclause (d) hereof shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse; and
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

Certification

- (d) At the time specified in subclause (e) hereof the employee must produce to his employer:
 - (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
 - (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (A) he will take that period of paternity leave to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by his spouse; and
 - (C) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

Notice requirements

- (e) (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (A) the birth occurring earlier than the expected date; or
 - (B) the death of the mother of the child; or
 - (C) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

Variation of period of paternity leave

- (f) (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (A) the period of paternity leave provided by paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of paternity leave

(g) Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

Paternity leave and other leave entitlements

- (h) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

Effect of paternity leave on employment

(i) Subject to this subclause, notwithstanding any award or other provision to the contrary absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (j) (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after paternity leave

- (k) (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this subclause to the position he held immediately before commencing such part-time work.

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

Replacement employees

- (l) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(C) ADOPTION LEAVE

Nature of leave

- (a) Adoption leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
 - (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more;
 - (iii) "Relative adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of their blood or half blood or by marriage);
 - (iv) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child;
 - (v) "Spouse" includes a de facto spouse; and
 - (vi) "Continuous service" means service under an unbroken contract of employment and includes:

- (A) any period of leave taken in accordance with this subclause;
- (B) any period of part-time employment worked in accordance with this subclause; or
- (C) any period of leave or absence authorised by the employer or by the award.

Eligibility

(c) An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of placement of the child; and
- (ii) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (A) any period of leave taken pursuant to paragraph (i) hereof; and
 - (B) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

Certification

- (d) Before taking adoption leave the employee must produce to the employer:
 - (i) (A) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (B) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

- (A) the employee is seeking adoption leave to become the primary care-giver of the child;
- (B) particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (C) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

Notice requirements

- (e) (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than twelve months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period to be taken.
- (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

Variation of period of adoption leave

- (f) (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

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- (A) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of adoption leave

- (g) (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

Special leave

(h) The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

Adoption leave and other entitlements

- (i) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on adoption leave.

Effect of adoption leave on employment

(j) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (k) (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after adoption leave

- (l) (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this subclause the position held immediately before commencing such part-time work.

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

Replacement employees

- (m) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(D) PART-TIME WORK

Definitions

- (a) For the purposes of this subclause:
 - (i) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes;
 - (ii) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes;
 - (iii) "Spouse" includes a de facto spouse;
 - (iv) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this subclause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition; and
 - (v) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;
 - (B) any period of part-time employment worked in accordance with this subclause; or
 - (C) any period of leave or absence authorised by the employer or by the award.

Entitlement

- (b) With the agreement of the employer:
 - (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

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- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

Return to former position

- (c) (i) An employee who has had at least twelve months' continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

Effect of part-time employment on continuous service

(d) Commencement on part-time work under this subclause, and return from part-time work to full-time work under this subclause, shall not break the continuity of service of employment.

Pro rata entitlements

(e) Subject to the provisions of this subclause and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

Transitional arrangements - annual leave

- (f) (i) An employee working part-time under this subclause shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee under this subclause.

- (ii) (A) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this subclause, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

Transitional arrangements - sick leave

(g) An employee working part-time under this subclause shall have sick leave entitlements which have accrued under this award (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

Part-time work agreement

- (h) (i) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work; and
 - (C) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (iv) The terms of this agreement shall apply to the part-time employment.

Termination of employment

- (i) (i) The employment of a part-time employee under this subclause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this subclause or has enjoyed or proposes to enjoy any benefits arising under this subclause.

- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this subclause, or while working full-time after transferring from part-time work under this subclause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

Extension of hours of work

(j) An employer may request, but not require, an employee working part-time under this subclause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (e) hereof.

Nature of part-time work

(k) The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

Inconsistent award provisions

(l) An employee may work part-time under this subclause notwithstanding any other provision of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (i) limiting the number of employees who may work part-time;
- (ii) establishing quotas as to the ratio of part-time to full-time employees;
- (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (iv) requiring consultation with, consent of or monitoring by a union; and such provisions do not apply to part-time work under this subclause.

Replacement employees

- (m) (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) hereof apply to the part-time employment of replacement employees.

- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

48 - TRADE UNION TRAINING LEAVE

(a) A union delegate or duly elected representative shall upon application in writing by the union be granted up to five days' leave with pay each calendar year, non-cumulative, to attend courses conducted or approved by the Australian Trade Union Training Authority.

The notice to the employer affected by the leave 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.

(b) Leave shall be granted by agreement between the employer and the union and shall be subject to the employee or the union giving not less than one calendar month's notice of the intention to attend such course or such lesser period as may be agreed between the parties. Provided that such leave is not to be taken during the Spring Carnival period.

(c) Each employee on leave approved in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of leave. Ordinary time earnings mean the classification rate, supplementary payments (if any), overaward payments, casual loading, penalty rates (excluding overtime payments to weekly employees) and shift loading.

(d) In the event that a day off which accrues in accordance with the nineteen day, four week work cycle agreement falls within a period of leave granted pursuant to this clause that day shall be transferred to another week.

(e) Leave granted will not incur any additional payment to the extent that course attendance coincides with any other period of paid leave granted pursuant to this award.

(f) The employer shall not be required to pay the costs of travel to and from the place where such courses are conducted and/or any accommodation during such leave.

(g) Leave of absence granted pursuant to this clause shall count as service for all purposes of the award.

(h) Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the course of the nature of the course and their observations on it.

(i) On completion of the course the employee shall, upon request, provide to the employer proof satisfactory to the employer of their attendance at the course.

(j) Employees who have completed a minimum of six months' continuous service with the TAB shall be eligible for leave pursuant to this clause.

49 - TRAINEESHIPS (ATS)

Objective

(a) The object of this clause is to provide the form and substance of the conditions of employment, including the rates of pay, applicable to persons engaged under the Australian Traineeship System. The purpose is to enhance the skill levels and future employment prospects for young people. An objective of the Australian Traineeships System is to provide additional employment and training opportunities for young people.

Definitions

(b) A Traineeship under the Australian Traineeship System comprises structured on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training provider approved by the State Training Board of Victoria. A training agreement means an agreement for training registered with the State Training Board of Victoria or under the provisions of the appropriate Victorian Training Legislation.

A trainee (ATS) is an employee who is bound by a training agreement registered with the State Training Board of Victoria.

Engagement of training conditions

- (c) (i) The engagement of trainees shall not cause the displacement of any existing employees. Nothing contained in this clause shall be interpreted so as to prevent the recruitment of junior employees by other methods.
- (ii) The trainees (ATS) will be engaged as required by the employer but the workload shall be monitored to ensure that there are no unreasonable work pressures or deadlines imposed, having regard to the existing work skills and experience of each of the trainees.
- (iii) The trainees (ATS) shall attend approved on and off-the-job training courses or programmes prescribed in the relevant training agreements or as notified to the trainees by the State Training Board of Victoria.

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- (iv) The trainees (ATS) may be engaged by employers registered with the State Training Board of Victoria. The employer shall ensure that the trainees (ATS) are permitted to attend the prescribed off-the-job training courses and are provided with on-the-job training approved by the State Training Board of Victoria.
- (v) All such training shall be in accordance with the requirements of the State Training Board of Victoria.

Employment conditions

- (d)
 - (i) The trainees (ATS) shall be engaged for a period of twelve months as full-time employees provided that the trainees (ATS) shall be subject to satisfactory probationary periods of up to one month.
 - (ii) The trainees (ATS) are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training agreement.
 - (iii) Where the employment of trainees (ATS) by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of the award and long service leave entitlements.
 - (iv) Overtime and shift work shall not be worked by trainees (ATS) except to enable the requirements of the training plan to be effected. When overtime and shift work are worked the relevant penalties and allowances of the award based on the trainee wage will apply. No trainees (ATS) shall work overtime or shift work on their own.
 - (v) The trainees (ATS) shall be exempt from action with respect to industrial disputes.
 - (vi) The union shall be afforded reasonable access to the trainees (ATS) for the purposes of explaining the role and functions of the union.

Wages

(e) The weekly wage payable to the trainees (ATS) shall be determined by multiplying the appropriate junior rate as specified in clause 29 of this award by 39 (which represents the actual time spent on-the-job) and dividing that sum by 52.

The wage rate determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines (which, as at 1 May 1990, cannot be less than \$108.35 per week. This figure is adjusted in accordance with the National Wage Case decision).

Operation

(f) This clause shall operate from 6 July 1990, and shall continue in force for a period of two years. Notwithstanding the foregoing, the intention is to continue this clause beyond this date unless a substantial case is put against it.

50 - JURY SERVICE

(a) Employees required to attend for jury service 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 amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.

(b) Employees shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. Further the employees shall give their employer proof of attendance, the duration of such attendance and the amounts received in respect of such jury service.

51 - MEAL AND REST PERIOD

(a) No employees shall be required to work for more than five hours without a break of 30 minutes for a meal.

(b) All employees shall be allowed two rest intervals each day as follows:

- (i) the first ten minutes to be allowed between the time of commencing work and the usual meal interval; and
- (ii) the second of ten minutes to be allowed between the usual meal interval and the time of ceasing work for the day.

Employees shall not be required to work during such rest intervals and such time will be counted as time worked.

52 - FACILITIES

The employer shall provide crockery, and facilities to enable employees to obtain boiling water.

53 - TIME AND WAGES RECORDS

The employer shall keep time and wages records showing the names of all employees, the hours worked each day, and the gross wages paid each week. The time and wages records shall be open for inspection to a duly accredited official of the union during the usual office hours at the employer's office, or other convenient place, with reasonable notice.

54 - RIGHT OF ENTRY

- (a) An official of the union, duly identified by TAB Security Pass, shall be permitted to enter the employer's premises for the purpose of interviewing employees on legitimate union business.
- (b) The employer shall recognise stewards appointed by the union and shall allow them reasonable time to perform their official duties as outlined in the union Rule Book.
- (c) Provided that there is no interference with work in the employer's establishment.

55 - NOTICE BOARDS

In each establishment there shall be installed in a prominent place a notice board on which shall be displayed at all times a current copy of this award and official union notices, as authorised by the State secretary of the union.

56 - TECHNOLOGICAL CHANGE

Definitions

- (a) For the purpose of this clause:
 - (i) "Technological change" means the introduction, alteration or replacement of computers (including a word processing machine), or work practices ancillary to the use of such equipment, which change, if implemented by the employer, may have material effects in or on the employment of persons to which this award applies.
 - (ii) "Computer" means an electronic device (including a word processing machine) which is capable of receiving facts or data, processing or performing calculations on that data and delivering answers or information in the required format for use by a person or to control the operations of another machine or computer.
 - (iii) "Material effects" means the termination of employment, the elimination or diminution of job opportunities, promotional opportunities, job tenure or the use of skills, the alteration of hours of work, and the need for retraining or transfer of employees to other work or locations.

Notification

(b) When the employer instructs or commissions employees, computer consultants or suppliers or any other persons to carry out an investigation of the feasibility of technological change or where the employer personally commences such an investigation, the following persons shall be notified:

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- (i) the secretary of the union; and
- (ii) in any case where the employer is able to identify the employees who may be materially affected in their employment by the change, those employees; that the investigation is being undertaken, and specify the employer's principal objective or objectives of such investigation.

Consultation during feasibility investigation

- (c) During the course of any feasibility investigation the employer shall;
 - (i) keep the union and the employees who have been notified informed of; and
 - (ii) when requested in writing by the union or by such employees or any of them to do so, consult with them about any technological change being considered, any material effect which might ensue and alternative proposals which might eliminate or lessen such effects.

Decision to implement

- (d)
 - (i) If the employer decides to implement technological change, the union and the employees who may be materially affected in their employment by the change, shall be notified as soon as possible thereafter.
 - (ii) After notifying the decision the employer will inform the union, and the employees who have been notified, of the nature and extent of likely material effects, will consult with them about the proposed change, the reasons for it and any alternative proposals which, if implemented might eliminate or lessen likely material effects.

Information

(e) In providing information to the employees and the union the employer will indicate the source thereof and provide such technical data as will allow evaluation of the likely material effects of any proposal for technological change. The information provided pursuant to this clause shall not be divulged to any other employer nor be used for any purpose other than the making of the said evaluation.

Method of notification

- (f)
 - (i) All notifications and information to the union will be addressed in writing to the secretary of the union or to such other officials thereof as is designated by the said secretary.
 - (ii) All notification and information to employees shall be in writing.

Consultation

(g) All consultation between the union and the employer will take place at the employer's place of business during the usual office hours at such time or times as are agreed upon, or in the absence of agreement, as are specified by the employer.

57 - TERMINATION OF EMPLOYMENT

Statement of employment

(a) The employer shall, upon receipt of a request from employees whose employment has been terminated, provide to those employees written statements specifying the period of their employment and the classification of or the type of work performed by those employees.

Notice of termination by employer

(b) (i) In order to terminate the employment of individual employees the employer shall give to those employees the following notice:

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

(ii) In addition to the notice in subclause (a) hereof, employees over 45 years of age at the time of giving notice and with not less than two years' continuous service shall be entitled to an additional week's notice.

(iii) Payment in lieu of the notice prescribed in paragraphs (i) and/or (ii) hereof shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(iv) In calculating any payment in lieu of notice, the wages employees would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated, shall be used.

(v) The period of notice in this clause shall not apply in the case of dismissal for misconduct.

(vi) For the purpose of this clause, continuity of service shall be calculated in the manner prescribed by subclause 44(c) of this award.

Notice of termination by employees

(c) The notice of termination required to be given by individual employees shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employees concerned. Subject to financial obligations imposed on an employer by any Act, if individual employees fail to give notice the employer shall have the right to withhold monies due to those employees with a maximum amount equal to the ordinary time rate of pay for the period of notice.

Time-off work during the period of notice

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

58 - REDUNDANCY

Consultation and provision of information/discussions before termination

- (a) (i) Where the employer has made a definite decision that the employer no longer wishes the job individual employees have been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the secretary of the union.
- (ii) The discussion shall take place as soon as it is practicable after the employer has made a definite decision which will invoke the provision of paragraph (i) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (iii) For the purposes of the discussion the employer, shall as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Subject to the provisions of clause 19 of this award, the employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.
- (iv) This clause shall not apply to employers who employ less than fifteen employees.

Transfer to lower paid duties

(b) Where individual employees are transferred to lower paid duties for reasons set out in paragraph (a)(i) hereof, they shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate and the new lower ordinary time rates for the number of weeks of notice still owing.

Transmission of business

- (c) (i) Where a business is before or after the date of this award, transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and employees who at the time of such transmission were employees of the transmittor in that business become employees of the transmittee:
- (A) the continuity of the employment of the employees shall be deemed not to have been broken by reasons of such transmission; and
 - (B) the period of employment which the employees have had with the transmittor or any prior transmittor shall be deemed to be service of employees with the transmittee.
- (ii) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

Time-work during the notice period

- (d) (i) During the period of notice of termination given by the employer, employees 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.
- (ii) If the employees have been allowed paid leave for more than one day the notice period for the purpose of seeking other employment, they shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

Notification to the Commonwealth Employment Service

(e) Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a)(i) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

Severance pay

(f) In addition to the period of notice prescribed for ordinary termination in paragraph 57(b)(i) of this award and subject to further award of the Commission, any employees whose employment is terminated for reasons set out in paragraph (a)(i) hereof shall be entitled to the following amounts of severance pay in respect of continuous period of service.

<u>Period of continuous service</u>	<u>Severance pay</u>
Less than 1 year	Nil
1 year but less than 2 years	4 weeks' pay
2 years but less than 3 years	6 weeks' pay
3 years but less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

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

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

No employees shall as a result of the provision of this subclause suffer any loss of benefit which they may have enjoyed prior to the operation of this clause.

Employees leaving during the notice period

(g) Employees whose employment is terminated for reasons set out in paragraph (a)(i) hereof may terminate their employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. Provided that in such circumstances the employees shall not be entitled to payment in lieu of notice.

Superannuation

(h) Subject to further award by the Commission, where employees who are terminated receive benefits from a superannuation scheme, they shall only receive under subclause (f) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit they receive which is attributable to employer contributions only. If this superannuation benefit is greater than the amount due under subclause (f) hereof then they shall receive no payment under that subclause.

Alternative employment

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

Exemption from redundancy

(j) This clause shall not apply where employment is terminated as a consequence of misconduct, or for employees engaged for a specific period of time or for a specified task or tasks.

Employers who employ less than fifteen people

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

Employees with less than one year's service

(l) This clause shall not apply to employees with less than one year's continuous service.

59 - BANK DEPOSITS AND/OR WITHDRAWALS

All employees shall be provided with a suitable adult escort when required to attend a banking institution for the purposes of depositing or withdrawing cash in excess of \$200.00.

60 - APPEALS PROCEDURE (PERMANENTS)

The following procedure shall apply in relation to disputes regarding gradings and classifications or other matters.

- (i) The matter in the first instance shall be raised between individual employees and their immediate supervisor and/or manager.
- (ii) If no satisfaction is reached, the employees shall refer the matter to the director, human resources.
- (iii) In the event of any dispute, the employees shall then have the opportunity for the union to appear on their behalf.
- (iv) Failing satisfaction, the matter can be referred to the Australian Industrial Relations Commission for determination.

61 - DISPUTES OF FACT

Any disputes of facts concerning any provision of this award shall be determined by the Australian Industrial Relations Commission in the first instance.

62 - DISPUTES PROCEDURE

(a) Should any matter arise which gives cause for concern to employees they shall raise such matter with management or shop steward who will consult each other with a view to resolving the issue.

(b) If the matter remains unresolved it may be referred to the branch secretary of the union (or accredited representative). This officer shall discuss it with a senior representative of management.

(c) If the matter remains unresolved it shall be referred to such higher levels of the union and management as may be appropriate. In the case of the union, this may involve the national secretary or their nominee.

(d) If the matter remains unresolved it may be submitted to the Australian Industrial Relations Commission for resolution.

(e) The parties shall at all times confer in good faith and without undue delay.

(f) While the above procedure is being followed, work shall continue normally except in cases where a bona fide issue is an immediate and dangerous situation to employees. Provided that, where employees cease work in an immediate and dangerous situation such employees will be transferred to other duties.

(g) If the provisions of subclauses (a), (b), (c) and (d) hereof all fail to resolve the dispute, then the parties reserve the right to pursue such action as considered necessary.

(h) No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

63 - DISMISSALS

No employees may be dismissed for disciplinary reasons without the right of appeal to the Australian Industrial Relations Commission.

64 - AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(a) It is open to the employer and employees covered by this Award to reach agreement to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such agreements may involve a variation in the application of award provisions in order to meet the requirements of the employer and their employees. Agreements may be negotiated and consequential award variations processed in accordance with the provisions of subclause (b) hereof.

(b) The union is prepared to discuss all matters raised by the employer and employees within the enterprise. Enterprise agreements may be concluded, subject to the following conditions:

(i) the majority of employees must genuinely agree;

(ii) no employees will lose income as a result of the change i.e. no negative offsets;

- (iii) any agreement must be approved by the union. Where enterprise level discussions are considering matters requiring any award variation, the union must be invited to participate;
- (iv) the union shall not withhold such approval unreasonably;
- (v) agreements involving variation to award standards shall come into effect upon approval by the Australian Industrial Relations Commission and shall be referred to in a schedule to this award after such approval.

65 - EXEMPTION

The award has not determined rates of pay or conditions of employment for any employees whose classification is not written into this award.

66 - SAVINGS CLAUSE

Notwithstanding the changes to this award, nothing in this award shall affect the terms and conditions of employment for existing employees as at 5 December 1990 whilst they remain within this Part, who shall instead receive those terms and conditions applying immediately before the date of this award variation.

PART III - DATA PROCESSING AND OPERATIONS CLERKS

(Clerical employees engaged to normally work five days per week between Monday and Saturday inclusive, in the Operations and Data Processing Divisions)

67 - DEFINITIONS

In this Part:

- (i) "Award" means the Totalizator Agency Board of Victoria Off Course Totalizator Employees Award 1993.
- (ii) "Commission" means the Australian Industrial Relations Commission.
- (iii) "Union" means The Federated Clerks Union of Australia.

68 - WAGES

[Pt III:68(a) substituted by V001 V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

(a) The rates of pay shall be:

Years of adult service	Grade 2	Grade 3	Grade 4
	Trainee Computer Operator Operations Supervisor Data Control Supervisor Fault Control Supervisor Operations Clerk Computer Assistant *Race Day Co-ordinator	Senior Supervisor Race Day Operations Computer Operator	Senior Computer Operator
	Per Annum \$	Per Annum \$	Per Annum \$
1	28,074	30,359	33,484
2	28,665	30,963	34,083
3	29,259	31,565	34,685
4	29,757	32,156	35,264
5	30,359	32,861	-
6	30,963	33,484	-
7	-	34,083	-

* Proceeds to Grade 3, Year 5 only.

Juniors

Age	Percentage of adult 1 st year of appropriate grade
16 years and under	60
17 years	70
18 years	80
19 years	90
20 years	100

(i) The minimum rates of pay for adult employees commencing employment shall be that prescribed for the first year in their grades, and they shall then progress annually to the next increment, in their grade until the top of their grades have been reached.

- (ii) On promotion employees must progress to their next higher increment in their new grades over their existing salaries and thereafter transfer annually until the top of their grades have been reached.

- (iii) Employees shall be advised individually in writing of their grades under this award.
- (iv) The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2002* decision [PR002002]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

(v) Federal Minimum Wage

1. No employee shall be paid less than the federal minimum wage.
2. Amount of federal adult minimum wage
 - (a) The federal minimum wage for full-time adult employees not covered by subclause 4 [special categories clause], is \$431.40 per week.
 - (b) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in subclause 2(a).
 - (c) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause 2(a) according to the number of hours worked.
3. How the federal minimum wage applies to juniors
 - (a) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause 3(b) is greater.

- (b) The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause 2.
- 4. Application of minimum wage to special categories of employee
 - (a) Due to the existing applicable award wage rates being greater than the relevant proportionate federal minimum wage, this clause has no application to employees undertaking a National Training Wage Traineeship, an Australian Traineeship, a Career Start Traineeship, a Jobskills placement or an apprenticeship.
 - (b) [Leave reserved for other special categories]
- 5. Application of federal minimum wage to award rates calculation

The federal minimum wage:

- (a) applies to all work in ordinary hours;
- (b) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (c) is inclusive of the arbitrated safety net adjustment provided by the *Safety Net Review – Wages May 2002* decision [Print PR002002] and all previous safety net and national wage adjustments.

Higher duties allowance

- (b) Adult employees called upon to perform continuously for one week or more the whole of the work of other employees in higher grades shall be paid for all such time worked at:
 - (i) the minimum rates of pay prescribed for those higher grades; or
 - (ii) the rates prescribed for those higher grades which are next higher than the award rate applicable to the relieving employees in their substantive grades whichever are the higher; provided that such employees shall not be paid during such periods at lower rates than those prescribed for their existing ordinary hours of work.

Withholding of advancement

- (b) (i) When reasonable cause exists, an employer may withhold advancement to the next incremental level of a grade or may reduce by one level of the grade for unsatisfactory job performance or disciplinary reasons, for a period of time not exceeding twelve months.
- (ii) Provided that at all times employees may appeal their cases through the grievance procedure and ultimately reference of the matter may be made to the Australian Industrial Relations Commission.
- (iii) And provided further where the employer intends to withhold or reduce an increment because of unsatisfactory job performance or disciplinary reasons, the State secretary of the union will be notified of this intention.

69 - HOURS OF WORK

The ordinary hours of work shall be seven hours and thirty-six minutes per day (38 hours per week) worked between 7.30 a.m. and 8.00 p.m. Monday to Saturday (inclusive).

70 - TERMS OF EMPLOYMENT

(a) Full-time employees are those who are engaged as such and who are ready, willing and available to work a full week of 38 hours and shall be paid the full weekly wage fixed herein (irrespective of the number of hours worked not exceeding the standard hours prescribed by the nineteen day, four week working cycle).

(b) Part-time employees are those who are engaged as such, on terms and conditions as agreed between the employer and the union and who are ready, willing and available to work according to these agreed terms and conditions. Provided that:

- (i) no existing employees will be disadvantaged by the introduction of part-time employment;
- (ii) part-time employees will be drawn from amongst current employees in the first instance;
- (iii) the employees must genuinely agree to the terms and conditions;
- (iv) no existing employees will suffer a reduction in the average weekly hours of work or income as a result of the introduction of part-time employment;
- (v) the union will not unreasonably oppose any agreement; and
- (vi) part-time employees shall be rostered to work regular hours on regular days.

71 - SHIFT WORK

Definitions

- (a) For the purpose of this clause:
 - (i) "Day shift" means any shift commencing not earlier than 7.30 a.m. and finishing at or before 8.00 p.m.; and
 - (ii) "Afternoon shift" means any shift finishing after 8.00 p.m. and at or before midnight.

Shift work allowance

- (b) For the ordinary hours of a shift, employees engaged on afternoon shift shall be paid in addition to their ordinary rates of pay, an additional 20 per cent for such shifts.

72 - OVERTIME

- (a) Employees working:
 - (i) within the hours fixed in clause 69 of this award in excess of hours fixed for an ordinary week's work (other than any additional hours worked to affect a nineteen day, four week work cycle);
 - (ii) outside the hours prescribed by an applicable shift roster; and
 - (iii) on a shift other than a rostered shift;

shall be paid time-and-one-half for the first three hours and double time thereafter calculated from the normal finishing time on a daily basis.

For the purpose of administering the provisions contained herein, the minimum period for which employees shall be paid overtime shall be one-half hour per week.

(b) An employer may require any employees to work reasonable overtime at overtime rates and such employees shall work overtime in accordance with such requirements subject to the following:

- (i) that junior employees shall be given on the day in question means of notifying their parents or guardians that they are so required to work; and
- (ii) reasonable notice shall be given to all employees regarding the working of overtime.

(c) When employees finish a period of overtime they shall be released until they have had ten consecutive hours off duty without loss of pay for their ordinary working time occurring during such absences. If they resume without having ten hours off duty they shall be paid overtime at double rates until they have had ten hours off duty.

73 - SHIFT WORK - SPECIAL PROVISIONS FOR COMPUTER CENTRE

The provisions of this clause are applicable only to computer operations and senior computer operators working shift work in the computer centre at the Totalizator Agency Board Head Office.

Definitions

- (a) For the purpose of this clause:
- (i) "Day shift" means any shift commencing not earlier than 7.00 a.m. and finishing at or before 6.00 p.m.;
 - (ii) "Afternoon shift" means any shift finishing after 6.00 p.m. and at or before midnight;
 - (iii) "Night shift" means any shift finishing after midnight but before 1.00 p.m.; and
 - (iv) "Rostered shift" means a shift of which the employees concerned have had at least three weeks' notice.

Hours of work/crib breaks

- (b) (i) The ordinary hours for a week's work shall not exceed 38 to be worked between Monday to Saturday (inclusive).
- (ii) Such ordinary hours shall be worked continuously except for crib breaks which shall be counted as time worked and shall be paid for.

One shift in 24 hours

- (c) Except at regular changeover of shifts, employees shall not be required to work more than one shift in 24 hours.

Variation by agreement

(d) The method of working shifts and/or times of commencing and finishing shifts once having been determined may in any case be varied by agreement between the employer and the union.

Shift work allowance

- (e) For the ordinary hours of a shift, employees engaged on:
 - (i) afternoon shift shall be paid in addition to the salaries prescribed in subclause 68(a) of this award - 20 per cent; and
 - (ii) night shift shall be paid in addition to the salaries prescribed in subclause 68(a) of this award - 25 per cent.

The abovementioned percentage allowances shall not be applied to the payment for any shift in any circumstances where shift workers are entitled to receive the extra rates prescribed for work on a Sunday.

Overtime

- (f) (i) All work performed by shift workers in excess of or outside the hours prescribed by the applicable shift roster or on a shift other than a rostered shift shall be paid for as follows:
 - (A) Monday to Saturday - at the rate of time and one-half for the first three hours and double time thereafter, except where the time is worked by arrangement between the employees themselves;
 - (B) Sunday - at the rate of double time with a minimum payment of four hours at such rate; and
 - (C) public holiday - at the rate of double time and one-half with a minimum payment of four hours at such rate.
- NOTE: The minimum payment referred to in subparagraphs (B) and (C) above shall not apply where such work is continuous with work commenced on the previous day or shift or completed on the following day or shift.
- (ii) Where shift workers cease to work overtime at times when the normal means of transport is not available, the employer shall provide transport or reimburse the employees for any additional outlay incurred in reaching their homes by other reasonable means of transport.

Rest period after overtime

(g) Employees who work so much overtime between the termination of their ordinary work on one day and the commencement of ordinary work on the next day that they have not had at least eight consecutive hours off duty between those times, shall be released after completion of such overtime without loss of pay until they have had eight consecutive hours off duty.

Pt III:73(g) - contd

For ordinary working time occurring during such absences if on the instruction of the employer, the employees resume or continue without having had such eight consecutive hours off duty, they shall be paid at double time until they are released from duty for such period and shall then be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absences.

Call back

(h) Shift workers recalled to work overtime after leaving the employer's premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate overtime rates for each time of such recalls provided that, except for the case of unforeseen circumstances arising, the employees shall not be required to work the full four hours if the work they were recalled to perform is completed within a shorter period.

This provision applies only to shift workers who are recalled to duty after working a rostered shift.

This subclause shall not apply in cases where employees work overtime which is continuous (subject to reasonable meal breaks) with the completion or commencement of ordinary working time.

Work on Sundays and public holidays

- (i) Shift workers required to work on:
 - (A) a Sunday shall be paid at the rate of double time;
 - (B) a public holiday other than a rostered shift shall be paid at the rate of double-time-and-one-half; and
 - (C) a public Holiday on a rostered shift shall be paid at the rate of double-time-and-one-half plus the shift allowance where required.

Shift workers whose rostered days off fall on a public holiday and who in that week are required to work an ordinary 38 hours, shall be paid an additional seven hours, thirty-six minutes at the rate of time-and-one-half.

74 - STANDING BY

Subject to any custom now prevailing under which employees are required regularly to hold themselves in readiness for a return to duty, employees required to hold themselves in readiness to work after ordinary hours shall until released be paid standing-by time at ordinary rates from the time they are so to hold themselves in readiness.

75 - PAYMENT OF WAGES

(a) Wages, overtime and allowances shall be paid during working hours not later than Thursday in each pay week. When Friday is a public holiday, payment shall be made not later than Wednesday in that week.

(b) On request an employee shall be supplied on or before pay day with a statement in writing showing or from which may be calculated the amount of ordinary pay, overtime, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

76 - MEAL ALLOWANCE

[Pt III:76 varied by V009 V010 V011 PR907922; PR919903 ppc 27Jun02]

Employees shall be supplied with adequate meals where an employer has cooking and dining facilities or be paid meal money in addition to any overtime payments as follows:

- (i) when required to work not less than one hour of overtime on rostered days - \$8.14. Provided that where such overtime exceeds four hours a further \$6.18 shall be paid;
- (ii) when required to work more than five hours' overtime on a rostered day off or Sunday - \$8.14 and a further \$6.18 when required to work more than nine hours on such day. These foregoing provisions shall not apply where employees could reasonably return home for meals within the period allowed; and
- (iii) on request meal money shall be paid on the same day as overtime is worked.

77 - VEHICLE ALLOWANCE

[Pt III:77(a) varied by V009 from 27Jun98]

(a) Where the employer requires employees to use their own motor cars in the performance of their duties, such employees shall be paid an allowance of not less than 44 cents per kilometre travelled.

(b) Where the employer provides motor vehicles which are used by employees in the performance of their duties, all expenses including registration, running, and maintenance of such motor vehicles shall be paid by the employer.

78 - EXCESS FARES AND TRAVELLING TIME

Employees who on any day are required to work at a place away from their usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from home to their usual place of employment and returning), shall be paid travelling time at appropriate rates and also any fares reasonably incurred in excess of those normally incurred in travelling between home and their usual place of employment.

Where the employer provides transport from a pick-up point, employees shall be paid travelling time for all time spent travelling from such pick-up point and return thereto.

79 - LIVING AWAY FROM HOME ALLOWANCE

Employees required by their employer to work temporarily away from their usual place of employment, and who are required thereby to sleep away from their usual place of residence, shall be entitled to the following:

- (i) first class fares to and from the place at which their employer requires the employees to work, when transport is not provided;
- (ii) all necessary expenses incurred for board and lodging; and
- (iii) payment of prevailing rates of pay, for all time spent in travelling between the employees' usual place of employment and the temporary location.

80 - UNIFORMS AND PROTECTIVE CLOTHING

Where uniforms and protective clothing are required to be worn they shall be provided and laundered by the employer. The employer shall provide protective clothing for employees engaged in work damaging to clothing.

81 - ACCIDENT MAKE-UP PAY

(a) An employer shall pay employees accident make-up pay where employees sustain injuries which qualify for compensation under the provisions of the Victorian Workers Compensation Act 1958.

(b) Accident make-up pay means that an employer shall pay employees the difference between the weekly amount of compensation received by employees and the weekly ordinary rate of pay at the time of the accident.

(c) The payment made by an employer shall be limited to a maximum period of 39 weeks for any one injury.

(d) Where an entitlement to accident make-up pay arises under this award any reference to the Victorian Workers Compensation Act 1958 shall be deemed to include a reference to the Accident Compensation Act 1992 and any reference to the Accident Compensation Act 1992 shall be deemed to include a reference to the Victorian Workers Compensation Act 1958.

82 - RETURN TO DUTY

Employees required to return to duty after the usual finishing time for that day shall be paid from the time of notification until the time of return to their places of residence at the overtime rates prescribed in clause 72 of this award hereof but shall receive a minimum payment as for three hours work. Provided that this clause shall not apply where the work is continuous (subject to a meal break of not more than one hour) with the completion or commencement of scheduled working time.

83 - PUBLIC HOLIDAYS

[83 substituted by V006 from 13Dec94]

(a) All work performed on public holidays shall be paid at double-time and one-half.

(b) Public holidays shall be: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Melbourne Cup Day, Christmas Day and Boxing Day.

(c) (i) When Christmas day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

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

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

(d) Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in (b) and (c) above, those days shall constitute additional holidays for the purpose of this award.

(e) (i) An employer, with the agreement of the Australian Services Union which is party to this award, may substitute another day for any prescribed in this clause.

(ii) (1) An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

(2) An agreement pursuant to (1) shall be recorded in writing and be available to every affected employee.

- (3) The Australian Services Union which is party to this award shall be informed of an agreement pursuant to (1) and may within seven days refuse to accept it. The Australian Services Union will not unreasonably refuse to accept the agreement.
- (4) If the Australian Services Union, pursuant to (3), refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the Australian Services Union.
- (5) If no resolution is achieved pursuant to (4), the employer may apply to the Commission for approval of the agreement reached with his or her employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and the Australian Services Union an opportunity to be heard, the Commission will determine the application.

84 - SPECIAL RATES - SUNDAY RACING

(a) Notwithstanding the rates of pay specified in clause 43 of this award for work performed on Sundays, the following rates of pay shall apply to work performed on Sunday race days.

	Grade II \$ Per Hour	Grade III \$ Per Hour	Grade IV \$ Per Hour
1	28.32	31.33	35.11
2	29.06	32.09	35.89
3	29.81	32.85	36.65
4	30.57	33.59	37.38
5	31.33	34.35	-
6	32.09	35.11	-
7	-	35.89	-

(b) An employee shall be paid the rate of pay equal to their classification and increment at the time the work is performed.

(c) The above rates shall remain fixed until such time as the rates are equal to double the normal rates from which time double time shall be the appropriate rate for all Sunday work.

(d) In addition, the following conditions shall apply:

- (i) work on a Sunday shall be voluntary. Employees shall be able to make themselves unavailable for a particular Sunday and still be considered for future Sunday work. In the event that the staffing available to operate on a Sunday is insufficient to meet the demands of the business the TAB will enter into discussions with the union; and

- (ii) all employees who volunteer to work on a Sunday must be rostered on a rotating basis so that all employees have fair and equal access to Sunday work.

85 - ANNUAL LEAVE

Entitlement

- (a) (i) Except as otherwise provided in this award, all employees shall at the end of each year of their employment by an employer, become entitled to four weeks' annual leave on ordinary pay.
- (ii) The annual leave shall be given and taken in four consecutive weeks, or if the employees and the employer agree, in such other periods as may be mutually agreed.
- (iii) If the employees and the employer so agree the annual leave may be taken wholly or partly in advance before the employees have become entitled to the annual leave.
- (iv) The annual leave shall be given by the employer and shall be taken by the employees before the expiration of a period of twelve months after the date upon which the right to such leave accrues. Provided that the giving and taking of the whole of any separate period of such annual leave may, with the consent in writing of the chief industrial officer of the Department of Labour, be postponed for a period to be specified in any case where the chief industrial officer is of the opinion that circumstances render such postponement necessary or desirable.
- (v) Except as provided in subclause (b) hereof, payment shall not be made by an employer to any employees in lieu of any annual leave or part thereof to which employees are entitled under this award, nor shall any such payment be accepted by employees.
- (vi) (A) Except in the case of mutual consent to the contrary the employer shall give individual employees at least one month's notice of the date from which their annual leave shall be taken.

(B) The employer shall pay individual employees their ordinary pay for the annual leave, in advance before the commencement of their leave.
- (vii) Where the annual leave or any part thereof has been taken before the right to the annual leave has accrued, the right to further annual leave shall not commence to accrue until after the expiration of the year of employment in respect of which the annual leave or part thereof has been so taken.

- (viii) Where public holidays for which employees are entitled to payment under this award or under their contracts of employment occur during any period of annual leave taken by employees under this clause, the period of the leave shall be increased by one day in respect of each public holiday.

Payment on termination

- (b) (i) Where the employment of employees who have become entitled to one or more annual leave periods provided by this award is terminated, the employer shall be deemed to have given the leave (except so much, if any, as has already been taken) to those employees as from the date of termination of their employment, and shall forthwith pay to them, in addition to all other amounts due, their ordinary pay for the period of that leave.
- (ii) Paragraph (i) hereof applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the employees concerned continue to be entitled (apart from this clause) to take it, and so applies as if the employees' rights to take it had accrued immediately before the date of the termination of employment.
- (iii) Nothing in paragraphs (i) or (ii) hereof affects the obligation of an employer to give, or employees to take, annual leave in accordance with this award.
- (iv) (A) This subclause applies with respect to every period of employment of employees by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the employees have during employment become entitled to any annual leave under the last preceding subclause) computed from the date upon which they became entitled to that annual leave, or to the last annual leave as the case may be.
- (B) Where the employment of individual employees by any employer is terminated at the end of a period of employment to which this subclause applies, the employer shall forthwith pay to those employees, in addition to all other amounts due to them, an amount equal to 1/12th of their ordinary pay for that period of employment.
- (v) Where the annual leave under subclause (a) hereof or any part thereof has been taken in advance by employees pursuant to paragraph (a)(iii) hereof; and
- (A) the employment of the employees is terminated before they have completed the year of employment in respect of which such annual leave or part was taken; and

Pt III:85(b) - contd

- (B) the sum paid by the employer to the employees as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the employees under paragraph (iv) hereof;

the employer shall not be liable to make any payment to the employees under paragraph (iv) hereof and shall be entitled to deduct the amount of such excess from any remuneration payable to the employees upon the termination.

- (vi) For the purposes of the two last preceding subclauses:

- (A) "Ordinary pay" in relation to any employees means remuneration for the employees' normal weekly number of hours of work calculated at the ordinary time rate of pay and where the employees are provided with board or lodging by their employer, includes the cash value of that board or lodging.

- (B) "Week" in relation to any employees means the employees' ordinary working week.

- (C) "Employees" means any persons employed by any employer to do any work for hire or reward.

Continuity of service

(c) For the purposes of this award a year of employment shall be deemed to be unbroken notwithstanding:

- (i) any annual leave or long service leave taken therein;
- (ii) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;
- (iii) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;
- (iv) any absence on account of leave (other than annual leave or long service leave) granted, imposed or agreed to by the employer; and
- (v) any absence on any other account not involving termination of employment and in calculating a year of employment any absence of a kind mentioned in paragraphs (i), (ii) or (iii) hereof shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (iv) and (v) hereof it will be necessary for the employees as part of their qualification for annual leave to serve such additional period as equals the period of such absences.

[Pt III:85(d) substituted by V003 ppc 23Dec93]

(d) In addition to the annual leave payment prescribed above, employees shall receive an annual leave loading of seventeen-and-one-half per cent. Provided that the loading shall only be payable in respect of a maximum of four weeks annual leave in any one year.

Additional provisions for computer centre employees

[Pt III:85(e) inserted by V003 ppc 23Dec93]

- (e) (i) In addition to the annual leave prescribed herein employees in the computer centre who work their ordinary weekly hours on rotating rosters spread over six days (Monday to Saturday) and including night shifts, shall be allowed seven consecutive days leave including non-working days.
- (ii) Where employee are engaged for part of the twelve monthly period on shift work under the conditions specified in paragraph (e)(i), they shall be entitled to a portion of the extra leave set out in paragraph (e)(i) hereof, calculated according to their length of service.
- (iii) For each period of leave taken, employees who would have worked on shift work had they not been on leave, shall be entitled to a loading of seventeen-and-one-half per cent calculated on their ordinary rates of pay or the shift allowances which would have been paid had they not been on leave, whichever of these amounts is the greater.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

86 - SICK LEAVE

(a) Any employees other than casual employees who having had at least three months' service with the same employer are absent from duty as a result of personal ill-health or accident shall be entitled to minimum sick pay as follows:

- (i) during the first year - 3-1/6 hours ordinary pay for each complete month of service; and
- (ii) during any subsequent year of service - 76 hours ordinary pay.

Provided that in either case such employees produce or forward within 48 hours of the commencement of such absences evidence satisfactory to the employer that their non-attendance was due to personal ill-health or accident necessitating such absences.

(b) If the sick leave as prescribed above is not taken in any year, it shall, provided employees remain in the service of the one employer or any successor of such employer, be cumulative from year to year.

No employer shall terminate the services of any employees during the currency of any periods of sick leave with the object of avoiding the obligations under this subclause.

(c) Provided that existing practices shall continue.

86A - FAMILY LEAVE

[86A inserted by V007 ppc 13Apr95]

A. Use of sick leave

1. An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this sub-clause, any sick leave entitlement which accrues after the date of this order for absences to provide care and support for such persons when they are ill.
2. The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
3. The entitlement to use sick leave in accordance with this sub-clause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being either:
 - (a) a member of the employees immediate family; or
 - (b) a member of the employees household.
 - (iii) The term immediate family includes:
 - (a) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (b) a child or an adult child (including an adopted child, a step-child or an ex-nuptial child), parent, grand parent, grand child, or sibling of the employee or spouse of the employee.
4. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

B. Unpaid leave for family purpose

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

C. Annual leave

1. Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.
2. Access to annual leave, as prescribed in paragraph C (1) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
3. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

D. Time off in lieu of payment for overtime

1. An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
2. Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
3. An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under paragraph D(1) of this sub-clause where such time has not been taken within four weeks of accrual.

E. Make-up time

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

F. Grievance Process

1. In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this award.

87 - COMPASSIONATE LEAVE

Individual employees shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law or father-in-law, be entitled on notice to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employees in three ordinary days' work. Proof of such death shall be furnished by the employees to the satisfaction of their employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause, the word "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a de facto wife or husband.

88 - PARENTAL LEAVE

(A) MATERNITY LEAVE

Nature of leave

- (a) Maternity leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
- (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Paternity leave" means leave of the type provided for in subclause (B) whether prescribed in an award or otherwise;
 - (iii) "Child" means a child of the employee under the age of one year;
 - (iv) "Spouse" includes a de facto or a former spouse; and
 - (v) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;
 - (B) any period of part-time employment worked in accordance with this subclause; or
 - (C) any period of leave or absence authorised by the employer or by the award.

Eligibility for maternity leave

(c) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

Certification

(d) At the time specified in subclause (e) hereof the employee must produce to her employer:

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

Notice requirements

- (e) (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i) hereof.
- (ii) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii) hereof.
- (iii) An employer by not less than fourteen days' notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this subclause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

Transfer to a safe job

- (f) (i) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k) and (l) hereof.

Variation of period of maternity leave

- (g) (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (A) the period of maternity leave may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

- (h) (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special maternity leave and sick leave

- (i) (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

- (A) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (B) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
 - (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

Maternity leave and other leave entitlements

- (j) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

Effect of maternity leave on employment

(k) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (l) (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after maternity leave

- (m) (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

Replacement employees

- (n) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(B) PATERNITY LEAVE

Nature of leave

- (a) Paternity leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
 - (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Maternity leave" means leave of the type provided for in subclause (A) (and includes special maternity leave) whether prescribed in an award or otherwise;
 - (iii) "Child" means a child of the employee or the employee's spouse under the age of one year;
 - (iv) "Spouse" includes a de facto or a former spouse;
 - (v) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child; and
 - (vi) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;
 - (B) any period of part-time employment worked in accordance with this subclause; or
 - (C) any period of leave or absence authorised by the employer or by the award.

Eligibility for paternity leave

(c) A male employee, upon production to his employer of the certificate required by subclause (d) hereof shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse; and
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

Certification

(d) At the time specified in subclause (e) hereof the employee must produce to his employer:

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (A) he will take that period of paternity leave to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by his spouse; and
 - (C) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

Notice requirements

- (e) (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.

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- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (A) the birth occurring earlier than the expected date; or
 - (B) the death of the mother of the child; or
 - (C) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

Variation of period of paternity leave

- (f) (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (A) the period of paternity leave provided by paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of paternity leave

(g) Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

Paternity leave and other leave entitlements

- (h) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

Effect of paternity leave on employment

(i) Subject to this subclause, notwithstanding any award or other provision to the contrary absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (j) (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after paternity leave

- (k) (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this subclause to the position he held immediately before commencing such part-time work.

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

Replacement employees

- (l) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(C) ADOPTION LEAVE

Nature of leave

- (a) Adoption leave is unpaid leave.

Definitions

- (b) For the purposes of this subclause:
 - (i) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work;
 - (ii) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more;
 - (iii) "Relative adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of their blood or half blood or by marriage);
 - (iv) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child;
 - (v) "Spouse" includes a de facto spouse; and
 - (vi) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;
 - (B) any period of part-time employment worked in accordance with this subclause; or
 - (C) any period of leave or absence authorised by the employer or by the award.

Eligibility

(c) An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of placement of the child; and
- (ii) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (A) any period of leave taken pursuant to paragraph (i) hereof; and
 - (B) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least twelve months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

Certification

- (d) Before taking adoption leave the employee must produce to the employer:
 - (i)
 - (A) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (B) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
 - (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (A) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (B) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (C) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

Notice requirements

- (e) (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than twelve months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period to be taken.
- (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

Variation of period of adoption leave

- (f) (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (A) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened; and
 - (B) the period may be further lengthened by agreement between the employer and the employee.

- (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of adoption leave

- (g) (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

Special leave

(h) The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

Adoption leave and other entitlements

- (i) (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on adoption leave.

Effect of adoption leave on employment

(j) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (k) (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

Pt III:88(C)(k) – contd

- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after adoption leave

- (l) (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this subclause the position held immediately before commencing such part-time work.

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

Replacement employees

- (m) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(D) PART-TIME WORK

Definitions

- (a) For the purposes of this subclause:
 - (i) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes;

Pt III:88(D)(a) – contd

- (ii) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes;
- (iii) "Spouse" includes a de facto spouse;
- (iv) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this subclause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition; and
- (v) "Continuous service" means service under an unbroken contract of employment and includes:
 - (A) any period of leave taken in accordance with this subclause;
 - (B) any period of part-time employment worked in accordance with this subclause; or
 - (C) any period of leave or absence authorised by the employer or by the award.

Entitlement

- (b) With the agreement of the employer:
 - (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
 - (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy necessary or desirable.
 - (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

Pt III:88(D)(b) – contd

- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

Return to former position

- (c) (i) An employee who has had at least twelve months' continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

Effect of part-time employment on continuous service

(d) Commencement on part-time work under this subclause, and return from part-time work to full-time work under this subclause, shall not break the continuity of service of employment.

Pro rata entitlements

(e) Subject to the provisions of this subclause and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

Transitional arrangements - annual leave

- (f) (i) An employee working part-time under this subclause shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee under this subclause.
- (ii) (A) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this subclause, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

Transitional arrangements - sick leave

(g) An employee working part-time under this subclause shall have sick leave entitlements which have accrued under this award (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

Part-time work agreement

- (h) (i) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work; and
 - (C) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (iv) The terms of this agreement shall apply to the part-time employment.

Termination of employment

- (i) (i) The employment of a part-time employee under this subclause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this subclause or has enjoyed or proposes to enjoy any benefits arising under this subclause.
- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this subclause, or while working full-time after transferring from part-time work under this subclause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

Extension of hours of work

(j) An employer may request, but not require, an employee working part-time under this subclause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (e) hereof.

Nature of part-time work

(k) The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

Inconsistent award provisions

(l) An employee may work part-time under this subclause notwithstanding any other provision of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (i) limiting the number of employees who may work part-time;
- (ii) establishing quotas as to the ratio of part-time to full-time employees;
- (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (iv) requiring consultation with, consent of or monitoring by a union; and such provisions do not apply to part-time work under this subclause.

Replacement employees

- (m) (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) hereof apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

89 - TRADE UNION TRAINING LEAVE

(a) A union delegate or duly elected representative shall upon application in writing by the union be granted up to five days' leave with pay each calendar year, non cumulative, to attend courses conducted or approved by the Australian Trade Union Training Authority. The notice to the employer affected by the leave 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.

(b) Leave shall be granted by agreement between the employer and the union and shall be subject to the employee or the union giving not less than one calendar month's notice of the intention to attend such course or such lesser period as may be agreed between the parties. Provided that such leave is not to be taken during the Spring Carnival period.

(c) Each employee on leave approved in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of leave. Ordinary time earnings mean the classification rate, supplementary payments (if any), overaward payments, casual loading, penalty rates (excluding overtime payments to weekly employees) and shift loading.

(d) In the event that a day off which accrues in accordance with the nineteen day, four week work cycle agreement falls within a period of leave granted pursuant to this clause that day shall be transferred to another week.

(e) Leave granted will not incur any additional payment to the extent that course attendance coincides with any other period of paid leave granted pursuant to this award.

(f) The employer shall not be required to pay the costs of travel to and from the place where such courses are conducted and/or any accommodation during such leave.

(g) Leave of absence granted pursuant to this clause shall count as service for all purposes of the award.

(h) Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the course of the nature of the course and their observations on it.

(i) On completion of the course the employee shall, upon request, provide to the employer proof satisfactory to the employer of their attendance at the course.

(j) Employees who have completed a minimum of six months' continuous service with the TAB shall be eligible for leave pursuant to this clause.

90 - TRAINEESHIPS (ATS)

Objective

(a) The object of this clause is to provide the form and substance of the conditions of employment, including the rates of pay, applicable to persons engaged under the Australian Traineeship System. The purpose is to enhance the skill levels and future employment prospects for young people. An objective of the Australian Traineeship System is to provide additional employment and training opportunities for young people.

Definitions

(b) A traineeship under the Australian Traineeship System comprises structured on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training provider approved by the State Training Board of Victoria. A training agreement means an agreement for training registered with the State Training Board of Victoria or under the provisions of the appropriate Victorian Training Legislation. A trainee (ATS) is an employee who is bound by a training agreement registered with the State Training Board of Victoria.

Engagement of training conditions

- (c) (i) The engagement of trainees shall not cause the displacement of any existing employees.

Nothing contained in this clause shall be interpreted so as to prevent the recruitment of junior employees by other methods.

- (ii) The trainees (ATS) will be engaged as required by the employer but the workload shall be monitored to ensure that there are no unreasonable work pressures or deadlines imposed, having regard to the existing work skills and experience of each of the trainees.
- (iii) The trainees (ATS) shall attend approved on and off-the-job training courses or programmes prescribed in the relevant training agreements or as notified to the trainees by the State Training Board of Victoria.
- (iv) The trainees (ATS) may be engaged by employers registered with the State Training Board of Victoria. The employer shall ensure that the trainees (ATS) are permitted to attend the prescribed off-the-job training courses and are provided with on-the-job training approved by the State Training Board of Victoria.
- (v) All such training shall be in accordance with the requirements of the State Training Board of Victoria.

Employment conditions

- (d) (i) The trainees (ATS) shall be engaged for a period of twelve months as full-time employees provided that the trainees (ATS) shall be subject to satisfactory probationary periods of up to one month.
- (ii) The trainees (ATS) are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training agreement.
- (iii) Where the employment of trainees (ATS) by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of the award and long service leave entitlements.
- (iv) Overtime and shift work shall not be worked by trainees (ATS) except to enable the requirements of the training plan to be effected. When overtime and shift work are worked the relevant penalties and allowances of the award based on the trainee wage will apply. No trainees (ATS) shall work overtime or shift work on their own.
- (v) The trainees (ATS) shall be exempt from action with respect to industrial disputes.
- (vi) The union shall be afforded reasonable access to the trainees (ATS) for the purposes of explaining the role and functions of the union.

Wages

(e) The weekly wage payable to the trainees (ATS) shall be determined by multiplying the appropriate junior rate as specified in clause 29 this award by thirty-nine (which represents the actual time spent on-the-job) and dividing that sum by fifty-two.

The wage rate determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines (which, as at 1 May 1990, cannot be less than \$108.35 per week. This figure is adjusted in accordance with the National Wage Case decision).

Operation

(f) This clause shall operate from 6 July 1990, and shall continue in force for a period of two years. Notwithstanding the foregoing, the intention is to continue this clause beyond this date unless a substantial case is put against it.

91 - JURY SERVICE

(a) Employees required to attend for jury service 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 amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.

(b) Employees shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. Further the employees shall given their employer proof of attendance, the duration of such attendance and the amounts received in respect of such jury service.

92 - MEAL AND REST PERIOD

(a) No employees shall be required to work for more than five hours without a break of thirty minutes for a meal.

(b) All employees shall be allowed two rest intervals each day as follows:

- (i) the first ten minutes to be allowed between the time of commencing work and the usual meal interval; and
- (ii) the second of ten minutes to be allowed between the usual meal interval and the time of ceasing work for the day.

Employees shall not be required to work during such rest intervals and such time will be counted as time worked.

93 - FACILITIES

The employer shall provide crockery, and facilities to enable employees to obtain boiling water.

94 - AMENITIES

First-aid kit

(a) In all establishments in which persons are employed the employer shall provide and continuously maintain at some conspicuous and easily accessible place a dust-proof first-aid outfit containing such items, and quantities thereof, as are prescribed in the Industrial Health and Welfare (General Safety) Regulations 1982 (see Explanatory Note at end of this award).

Ventilation, lighting, toilet and washing facilities

(b) The employer shall ensure that adequate ventilation, lighting and toilet and washing facilities are provided in accordance with the Labour and Industry Act and Regulations.

Heating and cooling

(c) Subject to the requirements of Regulation 39 of the Labour and Industry (Factories, Shops, Offices and Warehouses) Regulations, 1965 which provides that an office building shall be provided with suitable means and appliances for warming it to a temperature of 65 degrees F., the Board determines that in summer the employer shall provide suitable means and appliances for cooling as will ensure reasonable working conditions.

Seating

(d) Where opportunities exist for employees to sit, from time to time, without detriment to their work, suitable seats shall be provided to enable them to take advantage of these opportunities.

Drinking water

(e) In every office a continuous supply of clear wholesome water for drinking shall be provided. The drinking water provided shall be cool enough to be palatable and if the temperature of the water at the point of delivery rises above 75 degrees F. some means of cooling shall be provided.

Floor coverings

(f) Where an employee is required to work for a period exceeding half an hour on a floor of concrete, stone or similar material, the employer shall provide suitable floor covering or other insulating material.

Overcrowding

(g) Attention is drawn to clause 96 (2) of the Labour and Industry Act which reads: "The occupier of a shop shall not permit or suffer it or any part thereof to be at any time so overcrowded as to be dangerous or injurious to the persons of employees therein."

95 - TIME AND WAGES RECORDS

The employer shall keep time and wages records showing the names of all employees, the hours worked each day, and the gross wages paid each week. The time and wages records shall be open for inspection to a duly accredited official of the union during the usual office hours at the employer's office, or other convenient place, with reasonable notice.

96 - RIGHT OF ENTRY

(a) An official of the union, duly identified by TAB Security Pass, shall be permitted to enter the employer's premises for the purpose of interviewing employees on legitimate union business.

(b) The employer shall recognise stewards appointed by the union and shall allow them reasonable time to perform their official duties as outlined in the union rule book.

- (c) Provided that there is no interference with work in the employer's establishment.

97 - NOTICE BOARDS

In each establishment there shall be installed in a prominent place a notice board on which shall be displayed at all times a current copy of this award and official union notices, as authorised by the State secretary of the union.

98 - TECHNOLOGICAL CHANGE

Definitions

- (a) For the purpose of this clause:
- (i) "Technological change" means the introduction, alteration or replacement of computers (including a word processing machine), or work practices ancillary to the use of such equipment, which change, if implemented by the employer, may have material effects in or on the employment of persons to which this award applies.
 - (ii) "Computer" means an electronic device (including a word processing machine) which is capable of receiving facts or data, processing or performing calculations on that data and delivering answers or information in the required format for use by a person or to control the operations of another machine or computer.
 - (iii) "Material effects" means the termination of employment, the elimination or diminution of job opportunities, promotional opportunities, job tenure or the use of skills, the alteration of hours of work, and the need for retraining or transfer of employees to other work or locations.

Notification

(b) When the employer instructs or commissions employees, computer consultants or suppliers or any other persons to carry out an investigation of the feasibility of technological change or where the employer personally commences such an investigation, the following persons shall be notified:

- (i) the secretary of the union; and
- (ii) in any case where the employer is able to identify the employees who may be materially affected in their employment by the change, those employees that the investigation is being undertaken, and specify the employer's principal objective or objectives of such investigation.

Consultation during feasibility investigation

- (c) During the course of any feasibility investigation the employer shall:
 - (i) keep the union and the employees who have been notified informed of; and
 - (ii) when requested in writing by the union or by such employees or any of them to do so, consult with them about any technological change being considered, any material effect which might ensue and alternative proposals which might eliminate or lessen such effects.

Decision to implement

- (d) (i) If the employer decides to implement technological change, the union and the employees who may be materially affected in their employment by the change, shall be notified as soon as possible thereafter.
- (ii) After notifying the decision the employer will inform the union, and the employees who have been notified, of the nature and extent of likely material effects, will consult with them about the proposed change, the reasons for it and any alternative proposals which, if implemented might eliminate or lessen likely material effects.

Information

(e) In providing information to the employees and the union the employer will indicate the source thereof and provide such technical data as will allow evaluation of the likely material effects of any proposal for technological change. The information provided pursuant to this clause shall not be divulged to any other employer nor be used for any purpose other than the making of the said evaluation.

Method of notification

- (f) (i) All notifications and information to the union will be addressed in writing to the secretary of the union or to such other officials thereof as is designated by the said secretary.
- (ii) All notification and information to employees shall be in writing.

Consultation

(g) All consultation between the union and the employer will take place at the employer's place of business during the usual office hours at such time or times as are agreed upon, or in the absence of agreement, as are specified by the employer.

99 - TERMINATION OF EMPLOYMENT

Statement of employment

(a) The employer shall, upon receipt of a request from employees whose employment has been terminated, provide to those employees written statements specifying the period of their employment and the classification of or the type of work performed by those employees.

Notice of termination by employer

(b) (i) In order to terminate the employment of individual employees the employer shall give to those employees the following notice:

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

(ii) In addition to the notice in subclause (a) hereof, employees over 45 years of age at the time of giving notice and with not less than two years' continuous service shall be entitled to an additional week's notice.

(iii) Payment in lieu of the notice prescribed in paragraphs (i) and/or (ii) hereof shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(iv) In calculating any payment in lieu of notice, the wages employees would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated, shall be used.

(v) The period of notice in this clause shall not apply in the case of dismissal for misconduct.

(vi) For the purpose of this clause, continuity of service shall be calculated in the manner prescribed by subclause 44(c) of this award.

Notice of termination by employees

(c) The notice of termination required to be given by individual employees shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employees concerned. Subject to financial obligations imposed on an employer by any Act, if individual employees fail to give notice the employer shall have the right to withhold monies due to those employees with a maximum amount equal to the ordinary time rate of pay for the period of notice.

Time-off work during the period of notice

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

100 - REDUNDANCY

Consultation and provision of information/discussions before termination

- (a) (i) Where the employer has made a definite decision that the employer no longer wishes the job individual employees have been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the secretary of the union.
- (ii) The discussion shall take place as soon as it is practicable after the employer has made a definite decision which will invoke the provision of paragraph (i) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (iii) For the purposes of the discussion the employer, shall as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Subject to the provisions of clause 19 of this award, the employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.
- (iv) This clause shall not apply to employers who employ less than fifteen employees.

Transfer to lower paid duties

(b) Where individual employees are transferred to lower paid duties for reasons set out in paragraph (a)(i) hereof, they shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated, and the employer may at the employers option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate and the new lower ordinary time rates for the number of weeks of notice still owing.

Transmission of business

- (c) (i) Where a business is before or after the date of this award, transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and employees who at the time of such transmission were employees of the transmittor in that business become employees of the transmittee:
 - (A) the continuity of the employment of the employees shall be deemed not to have been broken by reasons of such transmission; and
 - (B) the period of employment which the employees have had with the transmittor or any prior transmittor shall be deemed to be service of employees with the transmittee.
- (ii) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

Time off work during the notice period

- (d) (i) During the period of notice of termination given by the employer, employees 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.
- (ii) If the employees have been allowed paid leave for more than one day the notice period for the purpose of seeking other employment, they shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

Notification to the Commonwealth Employment Service

(e) Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a)(i) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

Severance pay

(f) In addition to the period of notice prescribed for ordinary termination in paragraph 57(b)(i) of this award and subject to further award of the Commission, any employees whose employment is terminated for reasons set out in paragraph (a)(i) hereof shall be entitled to the following amounts of severance pay in respect of continuous period of service.

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<u>Period of continuous service</u>	<u>Severance pay</u>
Less than 1 year	Nil
1 year but less than 2 years	4 weeks' pay
2 years but less than 3 years	6 weeks' pay
3 years but less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

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

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

No employees shall as a result of the provision of this subclause suffer any loss of benefit which they may have enjoyed prior to the operation of this clause.

Employees leaving during the notice period

(g) Employees whose employment is terminated for reasons set out in paragraph (a)(i) hereof may terminate their employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had they remained with the employer until the expiry of such notice. Provided that in such circumstances the employees shall not be entitled to payment in lieu of notice.

Superannuation

(h) Subject to further award by the Commission, where employees who are terminated receive benefits from a superannuation scheme, they shall only receive under subclause (f) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit they receive which is attributable to employer contributions only. If this superannuation benefit is greater than the amount due under subclause (f) hereof then they shall receive no payment under that subclause.

Alternative employment

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

Exemption from redundancy

(j) This clause shall not apply where employment is terminated as a consequence of misconduct, or for employees engaged for a specific period of time or for a specified task or tasks.

Pt III:100 – contd

Employers who employ less than fifteen people

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

Employees with less than one year's service

(l) This clause shall not apply to employees with less than one year's continuous service.

101 - CASH HANDLING AND SECURITY

(a) Employees required to handle cash shall be given adequate lockable cash storage facilities to which they shall have exclusive access between the time of accepting responsibility on commencing and final balance at completion of the engagement.

(b) It shall not be a condition of employment for juniors under eighteen years of age to engage in cash business with the public.

(c) Shortages which are the result of malfunction of the ticket issuing machine or electronic or mechanical systems shall not be classified as shortages for the purpose of this clause.

102 - BANK DEPOSITS AND/OR WITHDRAWALS

All employees shall be provided with a suitable adult escort when required to attend a banking institution for the purposes of depositing or withdrawing cash in excess of \$200.00.

103 - SPECIAL CONDITIONS

(a) No employee of any Totalizator Agency Branch covered by this award shall be required to work alone in any branch on any day during the hours the branch is open for business with members of the public.

(b) No employee of any Totalizator Agency Board Agency covered by this award shall be required to work alone:

- (i) after 4.30 p.m. on Monday, Tuesday and Wednesday;
- (ii) any other days the Agency is open for business with members of the public; and
- (iii) any day that a metropolitan race meeting has been scheduled.

104 - APPEALS PROCEDURE (PERMANENTS)

The following procedure shall apply in relation to disputes regarding gradings and classifications or other matters.

- (i) The matter in the first instance shall be raised between individual employees and their immediate supervisor and/or manager.
- (ii) If no satisfaction is reached, the employees shall refer the matter to the director, human resources.
- (iii) In the event of any dispute, the employees shall then have the opportunity for the union to appear on their behalf.
- (iv) Failing satisfaction, the matter can be referred to the Australian Industrial Relations Commission for determination.

105 - DISPUTES OF FACT

Any disputes of facts concerning any provision of the award shall be determined by reference to the Australian Industrial Relations Commission in the first instance.

106 - DISPUTES PROCEDURE

(a) Should any matter arise which gives cause for concern to employees they shall raise such matter with management or shop steward who will consult each other with a view to resolving the issue.

(b) If the matter remains unresolved it may be referred to the branch secretary of the union (or accredited representative). This officer shall discuss it with a senior representative of management.

(c) If the matter remains unresolved it shall be referred to such higher levels of the union and management as may be appropriate. In the case of the union this may include the national secretary or their nominee.

(d) If the matter remains unresolved it may be submitted to the Australian Industrial Relations Commission for resolution.

(e) The parties shall at all times confer in good faith and without undue delay.

(f) While the above procedure is being followed, work shall continue normally except in cases where a bona fide issue is an immediate and dangerous situation to employees. Provided that, where employees cease work in an immediate and dangerous situation such employees will be transferred to other duties.

(g) If the provisions of subclauses (a), (b), (c) and (d) hereof all fail to resolve the dispute, then the parties reserve the right to pursue such action as considered necessary.

(h) No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

107 - DISMISSALS

No employees may be dismissed for disciplinary reasons without the right of appeal to the Australian Industrial Relations Commission.

108 - AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(a) It is open to the employer and employees covered by this award to reach agreement to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such agreements may involve a variation in the application of award provisions in order to meet the requirements of the employer and their employees. Agreements may be negotiated and consequential award variations processed in accordance with the provisions of subclause (b) hereof.

(b) The union is prepared to discuss all matters raised by the employer and employees within the enterprise. Enterprise agreements may be concluded, subject to the following conditions:

- (i) the majority of employees must genuinely agree;
- (ii) no employees will lose income as a result of the change i.e. no negative offsets;
- (iii) any agreement must be approved by the union. Where enterprise level discussions are considering matters requiring any award variation, the union must be invited to participate;
- (iv) the union shall not withhold such approval unreasonably;
- (v) agreements involving variation to award standards shall come into effect upon approval by the Australian Industrial Relations Commission and shall be referred to in a schedule to this award after such approval.

Pt III – contd

EXPLANATORY NOTES

First-aid outfit

Item	<u>Quantities per number of persons employed</u>	
	1 - 25	26 – 100
Cotton Wool, ½ oz. pkts.	3	6
Cotton Wool, 4 oz. pkts.	-	2
Gauze Pieces, Sterile, 3i x 3i pkts.	1	2
Burn Dressings, Sterile, Small	6	12
Burn Dressings, Sterile, Large	3	6
Eye Pads, Sterile, pkts	1	2
Gauze Bandages, 1i	3	6
Gauze Bandages, 2i	3	6
Triangular Bandages	1	3
Elastic Dressing Strip, 2 ½ i x 1 yd, pkts.	1	1
Adhesive Tape, 1i rolls	1	1
Adhesive Dressings Strips, Assorted, pkts.	1	2
Cetrimide B.P. 3% + Chlorhexidine 0.3% W/V in water (as liquid skin antiseptic), bottles	1	1
Cetrimide B.P. 0.5% + Chlorhexidine 0.1% W/V in a vanishing cream base (as an antiseptic ointment), tubes	1	1
Smelling Salts, or Sal Volatile, bottles	1	1
Scissors, pairs	1	1
Splinter Forceps or Tweezers, pairs	1	1
Flat Tourniquet	1	1
Mixture Glass	1	1
Safety Pins, pkts	1	1

APPENDIX I

Agreement between The Federated Clerks Union of Australia
- Victorian Branch and the Totalizator Agency Board of Victoria
on Administration; Operational Employees: Award Modernisation Agreement
(Excluding TAB Computer Centre Employees)

POSITION ON WORKING ROSTERED SHIFTS BETWEEN 6.00 P.M. AND 8.00 P.M.
PARTS II AND III - OFF COURSE TOTALIZATOR EMPLOYEES AWARD

Parties agree that the following facilitative mechanisms shall be used to resolve the issue of shifts finishing between the hours of 6.00 p.m. and 8.00 p.m. Monday to Saturday.

- (1) No current rostered shift, other than those specifically listed below, shall finish between the hours of 6.00 p.m. and 8.00 p.m..
- (2) In the event that the TAB requires for legitimate operational reasons a rostered shift to finish between 6.00 p.m. and 8.00 p.m. other than those listed below then the procedures as laid down in the award modernisation clause shall be employed. The parties agree to process these steps as expeditiously as possible and to use them to resolve all parties legitimate requirements as to the terms and conditions of such rostered shifts.

The union places on record its desire to see the absolute minimum of shifts conclude between 6.00 p.m. and 8.00 p.m. in future.

- (3) Rostered shifts concluding between 6.00 p.m. and 8.00 p.m. in the current Part II of the award shall also come under the scope of this agreement.
- (4) The shifts agreed between the parties as to finish between 6.00 p.m. and 8.00 p.m. are the following existing shifts:
 - (4.1) 10.00 a.m. to 6.17 p.m., Saturdays, Box Hill Telephone Betting Centre; and
 - (4.2) 10.00 a.m. to 6.17 p.m., Melbourne Cup Day Meeting, Queens Road and Box Hill, Telephone Betting Centres.

The parties agree to have this document appended in line with the award modernisation provisions to Parts II and III of the Off Course Totalizator Employees Award.

Date of Agreement: 6 December 1990.

APPENDIX II

[Appx II inserted by V004 from 15Aug94]

Agreement between the Australian Services Union (Administrative and Clerical Branch) and TABCORP Holdings Limited on the introduction of permanent part-time employment in the service restoration centre and telephone betting operations area (co-ordinators).

1 - OPERATIVE DATE

Permanent part-time employment shall be available commencing the first full roster period on or after 15 August 1994.

2 - CLASSIFICATION

Service restoration centre

- (a) (i) Permanent part-time employees engaged in duties in the Service Restoration Centre (SRC) shall be graded at grade 2 (casual SRC staff shall continue to receive the higher duties allowance specified in part 1 of the award).
- (ii) For the purposes of determining the incremental level within grade 2, prior casual service within SRC shall be recognised on the basis of two years casual service equating to one year's equivalent full-time service.
- (iii) Other appointments shall normally be made to year one.

Telephone betting co-ordinators

- (b) (i) Permanent part-time employees engaged in telephone betting co-ordinator duties shall be graded at grade 3.
- (ii) Appointments shall normally be made to year one, provided that prior service as a full-time co-ordinator shall be fully recognised.

3 - ORDINARY HOURS OF WORK

The ordinary hours of work shall be up to seven hours and 36 minutes per day and up to 30 hours per week worked between 7.30 a.m. and 8.00 p.m., Monday to Saturday inclusive.

4 - OVERTIME

- (a) Employees working:
 - (i) in excess of 7 hours, 36 minutes per day or;
 - (ii) in excess of 30 hours per week,

shall be paid time and one-half or the ordinary rate for the first three hours and double time thereafter.

- (b) Provided that each day's work shall stand alone.

5 - PUBLIC HOLIDAYS

Public holidays as specified in the award will be recognised if they fall on an employee's rostered day on, according to the posted roster.

6 - JURY SERVICE/COMPASSIONATE LEAVE

Jury service and compassionate leave will be recognised in accordance with the award if they occur on an employee's rostered day on, according to the posted.

7 - ACCRUED DAYS OFF

Part-time employees shall not be eligible to work a nineteen day, four week work cycle and accordingly shall not accrue any days off.

8 - HIGHER DUTIES

Service restoration centre

When acting in the capacity of a full-time supervisor for two hours or more, a part-time employee shall receive higher duties to the base level of the supervisor position or the higher year of service at grade 3, should the employee be on year 5 or 6 at grade 2.

9 - OTHER TERMS AND CONDITIONS

All other award terms and conditions of part-time employees shall be in accordance with part III of the award on a pro-rata basis, based on the ordinary hours specified for those part-time employees.

10 - RESERVED MATTERS

(a) The union reserves the right to pursue higher classifications for all employees at the time of the introduction of the new skills based classification structure.

- (b) The TAB reserves the right to examine a higher level of ordinary hours per week.

Pt III - contd

Schedule 1 - Sportsphone

[Sched 1 inserted by V008 from 02Apr96]

Agreement between TABCORP Holdings Limited and the Australian Services Union arising from the relocation of Sportsphone from the Box Hill Telephone Betting Centre to 1 Queens Road, Melbourne

This agreement shall apply to all existing Telephone Betting Operators/Race Day Assistants who undertake shifts in the Sportsphone operations of TABCORP hereafter referred to as relevant employees.

1. All relevant employees shall have the right to return to Telephone Betting only duties. Such transfer shall occur as soon as practicable after the request, having regard to the availability of trained Sportsphone personnel.
2. Telephone Betting Operators/Race Day Assistants who undertake shifts in the Sportsphone operation of Tabcorp shall continue to work such shifts as part of their principal overall employment as Telephone Betting operators and shall continue to receive shifts, including double shifts where applicable, according to their availabilities as do all other Telephone Betting operators.
3. No relevant employee will be rostered to work a shift at both the Box Hill and Queens Road facilities on the same day except by request of the employee.
4. Relevant employees are eligible to use the Racing Industry Centre car park during off-peak times, ie after 5.00 p.m. Monday to Friday, and on weekends and public holidays. A fee per vehicle is charged for casual car parking - currently \$2 per entry and as varied from time to time in accordance with the Tabcorp Human Resources Policy Manual. Where an employee is required to move his or her vehicle during working hours, he or she shall be provided with reasonable opportunity to do so, provided that it is at such time that there is no impact on the operation of the business.
5. Regard shall be had for employees who utilise commercial parking car facilities within close proximity to Tabcorp and who during those shifts which extend into the evening, exercise their option to subsequently use the Racing Industry Centre car park. In these situations, Tabcorp shall have regard to monies already paid for car parking when charging for the use of the Racing Industry Centre car park.

Pt III:Sched 1 – contd

Provided that this clause shall apply to relevant employees engaged within six months from 12 March 1996, and shall be subject to review for all relevant employees engaged on or after 12 September 1996.

6. The parties reserve the right to re-negotiate the Agreement in the event of a material change on these issues, and in the event of a dispute, the parties should refer the matter to the Australian Industrial Relations Commission in accordance with the disputes procedure.
7. This Agreement shall be reviewed as soon as practicable after 31 December 1996.

** end of text **