

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AUSTRALIAN INDUSTRIAL REGISTRY LOOSE-LEAF CONSOLIDATION

THE FOXTEL AWARD 1999

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of awards pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00428 of 1999)

THE FOXTEL AWARD 1995

(ODN C No. 23480 of 1995)

[Print M8006 [F0379]]

SENIOR DEPUTY PRESIDENT POLITES

MELBOURNE, 1 FEBRUARY 2000

Award simplification - item 51 review.

PREAMBLE

The parties have conferred on this matter and presented a draft award, which is now incorporated in exhibit F1. The Commission is satisfied that the draft complies with the provisions of Item 51 of the Transitional Provisions of the *Workplace Relations and Other Legislation Amendment Act 1996* and the Commission now proceeds to make a new simplified award to be known as The Foxtel Award 1999.

The award will come into effect from the first pay period to commence on or after 16 December 1999 and will have a nominal life of two years.

ORDER

A. The above award is varied as follows:

1. By deleting clauses 1 to 29 and schedules A, B and C and inserting the following:

PART 1 - APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award is called The Foxtel Award 1999.

2. ARRANGEMENT

[2 varied by PR956119 ppc 08Oct04]

This award is arranged as follows:

Part 1 - Application and operation of award

1. Award title
2. Arrangement
3. Commencement date of award and period of operation
4. Parties bound
5. Relationship with other awards

Part 2 - Dispute resolution

6. Procedures for the avoidance of industrial disputes

Part 3 - Employer and employee's duties, employment relationship and related arrangements

7. Employment relationship
8. Notice of termination
- 8A. Redundancy

Part 4 - Wages and related matters

9. Classifications
10. Rates of pay
11. Application of schedule A - rates of pay
12. Payment of wages
13. Superannuation

Part 5 - Hours of work, breaks and overtime

14. Hours of work
15. Breaks
16. Overtime

Part 6 - Leave of absence and public holidays

17. Annual leave
18. Personal leave
19. Parental leave
20. Long service leave
21. Public holidays

Part 7 - Miscellaneous

22. Anti-discrimination
23. Leave reserved

Schedule A Classification and grading schedule

3. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION

This award will commence on 16 December 1999 and operate for a period of two years.

WGNETSTART_DOCASSOC_04. PARTIES BOUND

[4 substituted by PR931985 ppc 08May03]

4.1 The parties bound by this award are:

4.1.1 Foxtel Management Pty Limited ACN 068 671 938 (Foxtel) and Customer Services Pty Ltd ACN 069 262 117 (Customer Services). Each referred to as the employer;

4.1.2 the Media, Entertainment and Arts Alliance (MEAA);

4.1.3 the Australian Municipal, Administrative, Clerical and Services Union (the ASU) [C2001/5866] in respect of employees of Customer Services who fall within the eligibility rules of the ASU; and

4.1.4 the employees of Foxtel or Customer Services engaged in any of the classifications specified in Schedule A (the employees).

5. RELATIONSHIP WITH OTHER AWARDS

This award will regulate the minimum rates of pay and conditions of employment of the employees to the exclusion of all other industrial awards and agreements.

PART 2 -DISPUTE RESOLUTION

6. PROCEDURES FOR THE AVOIDANCE OF INDUSTRIAL DISPUTES

6.1 The following procedure will apply for preventing and settling issues, disputes and grievances between the parties bound by this award:

6.1.1 if an employee has a grievance or an issue to raise, or is in dispute with his/her employer about any matter, the employee will discuss the matter with his/her immediate supervisor or manager;

6.1.2 if the matter remains unresolved, the employee will refer the matter to the appropriate member of the Senior Management Team, the Human Resources Manager or other HR representative;

[6.1.3 substituted by PR931985 ppc 08May03]

6.1.3 where any such attempt at settlement has failed, and where the dispute is in relation to a matter covered by this award and is of such a nature that a direct discussion between the employee and the appropriate member of the Senior Management Team and/or the Human Resources Manager or other HR Representative would be inappropriate, the employee may obtain the assistance of any other person, including an officer of the relevant union;

6.1.4 if the matter is not settled, it may be submitted to an independent mediator, including the Australian Industrial Relations Commission, agreed between the parties, who shall endeavour to resolve the dispute by conciliation;

6.1.5 without prejudice to either party, work will continue in accordance with this award while the matters in dispute are being dealt with pursuant to this procedure;

6.1.6 nothing in this clause shall reduce the rights conferred under the *Workplace Relations Act 1996* (the Act).

6.2 Redundancy disputes

[6.2 inserted by PR956119 ppc 08Oct04]

6.2.1 Paragraphs 6.2.2 and 6.2.3 impose additional obligations on the employer where the employer contemplates termination of employment due to redundancy and a dispute arises (a **redundancy dispute**).

6.2.2 Where a redundancy dispute arises, and if it has not already done so, the employer must provide affected employees and the union (if requested by any affected employee) in good time, with relevant information including:

- the reasons for any proposed redundancy;
- the number and categories of workers likely to be affected; and
- the period over which any proposed redundancies are intended to be carried out.

6.2.3 Where a redundancy dispute arises and discussions occur in accordance with this clause the employer will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned.

PART 3 - EMPLOYER AND EMPLOYEE'S DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

7. EMPLOYMENT RELATIONSHIP

7.1 Subject to this clause the employer may employ an employee in one of the following categories:

Category Description

7.1.1 Full-time employee An employee engaged to work 152 or 160 hours of ordinary time per four week roster cycle on an ongoing basis.

7.1.2 Part-time employee An employee engaged to work less than 152 hours of ordinary time per four week roster cycle on an ongoing basis. Such an employee shall receive all benefits and entitlements under this award calculated on a pro rata basis.

7.1.3 Temporary employee An employee engaged as such by written agreement for a specified term or task.

The engagement can only be renewed by another written engagement signed by the employer and the employee.

7.1.4 Casual employee An employee engaged by the hour and paid by the hour with a minimum call of four hours, such employee shall receive a 15% loading of the classification rate in column 1 of schedule A in lieu of benefits and entitlements under this award.

7.2 The employer reserves the right to engage employees in forms of employment not specified in this clause provided that the minimum terms and conditions of this award are not breached. These forms of employment may include but are not limited to telecommuting and home-based work.

7.3 Probation/training period

7.3.1 All full-time and part-time employees are engaged subject to the successful completion of a probationary period of thirteen weeks.

7.3.2 Full-time and part-time employees who are required at the commencement of their employment to undertake a competency course or formal training, may be paid 90% of the actual rate of pay of a fully competent employee as set out in schedule A for a maximum period of thirteen weeks.

7.4 Letter of appointment

Prior to the commencement of employment, Foxtel shall confirm in writing the employee's classification, base rate of pay, and the form of employment as per clause 7.1 of the award.

8. NOTICE OF TERMINATION

[8 Termination of employment title changed and substituted by PR956119 ppc 08Oct04]

8.1 Notice of termination by employer

8.1.1 In order to terminate the employment of an employee the employer must give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

8.1.2 In addition to the notice in 8.1.1, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

8.1.3 Payment in lieu of the prescribed notice in 8.1.1 and 8.1.2 must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

8.1.4 The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

8.1.4(a) the employee's ordinary hours of work (even if not standard hours); and

8.1.4(b) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

8.1.4(c) any other amounts payable under the employee's contract of employment.

8.1.5 The period of notice in this clause does not apply:

8.1.5(a) in the case of dismissal for serious misconduct;

8.1.5(b) to apprentices;

8.1.5(c) to employees engaged for a specific period of time or for a specific task or tasks;

8.1.5(d) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or

8.1.5(e) to casual employees.

8.1.6 Continuous service means service under an unbroken contract of employment and includes any period of paid or unpaid leave or absence authorized by the employer or by the award. Any period of unpaid leave does not break an employee's continuity of service but does not otherwise count as service.

8.2 Notice of termination by an employee

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

8.2.2 If an employee fails to give the notice specified in 8.1.1 the employer has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 8.1.4.

8.3 Job search entitlement

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

8.4 Transmission of business

Where a business is transmitted from one employer to another, as set out in clause 8A - Redundancy, the period of continuous service that the employee had with the transmitter or any prior transmitter is deemed to be service with the transmittee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

8A. REDUNDANCY

[8A inserted by PR956119 ppc 08Oct04]

8A.1 Definitions

8A.1.1 Business includes trade, process, business or occupation and includes part of any such business.

8A.1.2 Redundancy occurs where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

8A.1.3 Transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.

8A.1.4 Week's pay means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and

- any other ancillary payments of a like nature.

8A.2 Transfer to lower paid duties

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

8A.3 Severance pay

8A.3.1 Severance pay

An employee whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

* **Week's pay** is defined in 8A.1.

8A.3.2 Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

8A.3.3 Continuity of service shall be calculated in the manner prescribed by clause 8.1.6.

8A.3.4 Application may be made for variation of the severance pay provided for in this clause in a particular redundancy situation in accordance with the *Redundancy Case Decision* [PR032004, 26 March 2004] and the *Redundancy Case Supplementary Decision* [PR062004, 8 June 2004].

8A.4 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 8 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

8A.5 Alternative employment

8A.5.1 An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

8A.5.2 This provision does not apply in circumstances involving transmission of business as set in 8A.7.

8A.6 Job search entitlement

8A.6.1 During the period of notice of termination given by the employer in accordance with 8.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

8A.6.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

8A.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 8.3.

8A.7 Transmission of business

8A.7.1 The provisions of this clause are not applicable 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**), in any of the following circumstances:

8A.7.1(a) Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

8A.7.1(b) Where the employee rejects an offer of employment with the transmittee:

in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

8A.7.2 The Commission may vary 8A.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

8A.8 Employees exempted

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- apprentices;
- trainees;
- employees engaged for a specific period of time or for a specified task or tasks; or

- casual employees.

8A.9 Incapacity to pay

The Commission may vary the severance pay prescription on the basis of an employer's incapacity to pay. An application for variation may be made by an employer or a group of employers.

PART 4 - WAGES AND RELATED MATTERS

9. CLASSIFICATIONS

9.1 The employer will classify employees in accordance with the classification and grading schedule contained in schedule A and shall not pay less than the salary set out in column 1 for the classification.

9.2 An employee may be required to perform any work that is within the employee's skill, training and experience.

10. RATES OF PAY

10.1 There shall be three rates of pay:

10.1.1 A core rate for all ordinary hours:

10.1.1(a) full-time employees receive an ordinary core rate for an average of 152 hours over each four week cycle. Column 1 of schedule A nominates the core rate for each classification;

10.1.1(b) the employer and the employee may agree that the employee be rostered, on a permanent basis, 160 hours over each four week cycle. Column 2 of schedule A nominates the rate for each classification that will apply for ordinary hours;

10.1.1(c) part-time employees receive an ordinary hourly core rate for all time worked which is pro rata of the appropriate full-time employees' classification core rate based on 152 hours over a four week cycle; and

10.1.1(d) casual employees receive the ordinary hourly core rate plus a 15% loading for all time worked. This loading covers all incidents of employment, including sick leave, annual leave, bereavement leave, family leave and work on public holidays.

10.1.2 A non-core rate for all hours worked outside core hours, i.e. 10.00 p.m. and 6.00 a.m. The non-core rate is the ordinary hourly rate plus a loading of 20%.

10.1.3 An overtime rate which is set out in clause 16 - Overtime.

11. APPLICATION OF SCHEDULE A - RATES OF PAY

11.1 The wage rates in schedule A are in full compensation for the hours and days on which hours of work are performed under the award other than the non-core hour penalty referred to in clause 10.1.2.

11.2 It is acknowledged that the shift patterns of individual employees will vary from time to time and also that some groups of employees and individuals may regularly work weekends or evenings, whilst others may not.

11.3 The rates of pay agreed by the parties and set out in schedule A have been expressly fixed to take

into account and compensate for the mixed pattern of work referred to in clause 11.2.

12. PAYMENT OF WAGES

12.1 The employer shall pay its employees by electronic funds transfer in equal instalments:

12.1.1 fortnightly; or

12.1.2 such other regular interval that is mutually agreed between the employer and the employee.

13. SUPERANNUATION

The employers will make superannuation contributions to Foxtel Management Pty Ltd's superannuation fund or Just Super as determined by the employee in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

PART 5 - HOURS OF WORK, BREAKS AND OVERTIME

14. HOURS OF WORK

14.1 Standard provisions

14.1.1 All hours of work will be divided between core and non-core hours.

14.1.2 Core hours shall be between 6.00 a.m. and 10.00 p.m. unless varied.

14.1.3 Non-core hours shall be hours worked outside core hours, that is between 10.00 p.m. and 6.00 a.m.

14.1.4 The ordinary hours of work of full-time employees will be a minimum of 152 hours per four week roster cycle.

14.1.5 The employer and employee may agree to 160 hours per four week roster cycle on an ongoing basis provided the employee is paid the appropriate classification rate, set out in column 2 of schedule A.

14.1.6 The ordinary hours of work of part-time employees will be less than 152 hours per four week roster cycle.

14.1.7 Ordinary hours for full-time and part-time employees may be worked on up to any twenty days per four week roster cycle, as determined by the employer. The minimum number of ordinary hours to be rostered for full-time and part-time employees on any one day is four; the maximum twelve (inclusive of unpaid meal break).

14.2 Days off

Employees shall have a minimum of four days off from work each fortnight and not less than two of those four days shall be consecutive days, unless other arrangements are agreed to by the employer and the employee.

14.3 Roster

The employer will provide full-time and part-time employees with a roster that specifies the times and days on which the employee will be required to work their ordinary hours at least seven days before the commencement of each roster cycle. Changes to the roster with less than seven days notice may be by

mutual agreement or in an emergency situation.

15. BREAKS

15.1 Breaks between shifts

15.1.1 Employees will not ordinarily be rostered to work within eleven hours of having completed their previous period of rostered work.

15.1.2 Exceptions to the eleven hour provision will only occur when the following considerations have been met:

15.1.2(a) that the employee has had to be scheduled to work within the eleven hour period to meet an unforeseen emergency, or unusual circumstances; and

15.1.2(b) there is no other suitable employee available; and

15.1.2(c) the employee concerned agrees.

In these circumstances, the employee shall be paid an additional 100% loading for each hour worked within the eleven hour break period.

15.2 Meal break

15.2.1 Employees shall be entitled to a minimum of one half hour unpaid meal break within, or at the completion of five hours of commencing work and a further half hour unpaid break within or at the completion of each subsequent five hour work period. Employees engaged in on-air operations shall be entitled to a half hour unpaid meal break within or at the completion of six hours of commencing work and a further half hour unpaid meal break within or at the completion of a further six hour work period.

15.2.2 The timing and duration of all breaks shall be structured by the employer consistent with the employer's operational requirements and in accordance with its policy that employees should have adequate breaks during their working periods.

15.2.3 In the event that an employee is unable, due to unforeseen circumstances, to take a rostered meal break when due, the meal break shall be taken as soon as possible thereafter. If the meal break is not eventually taken, the time of the meal break shall be treated as overtime.

16. OVERTIME

16.1 Overtime represents all time worked outside an employee's roster and accrues on a daily basis.

16.2 Employees shall not be rostered in excess of twelve hours on any one day, or 152 hours (or where the employer and employee have agreed as per clause 14.1.5 - 160 hours) in any four week cycle.

16.3 Overtime shall be paid at the rate of time and one half for the first two hours each day and double time thereafter calculated on the employee's base hourly salary rate.

16.4 Where an employee works overtime during non-core hours:

16.4.1 his/her overtime rate will be calculated on his/her base rate;

16.4.2 she/he shall be paid the penalty referred to in clause 10.1.2 for all non-core hours worked.

Such penalty to be calculated on his/her base rate.

16.5 Overtime will be paid for in half hour units. For the purpose of calculating time worked, all time less than fifteen minutes shall be disregarded. All time in excess of fifteen minutes shall be rounded up to the nearest half hour.

16.6 Overtime shall be paid within fourteen days of the end of the fortnight in which the overtime was worked.

[16.7 substituted by PR935327 ppc 08Jul03]

16.7 Reasonable overtime

16.7.1 Subject to clause 16.7.2 an employer may require an employee to work reasonable overtime at overtime rates.

16.7.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

16.7.2(a) any risk to employee health and safety;

16.7.2(b) the employee's personal circumstances including any family responsibilities;

16.7.2(c) the needs of the workplace or enterprise;

16.7.2(d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

16.7.2(e) any other relevant matter.

16.8 An employee, with the mutual agreement of the employer, may opt to take time off in lieu of overtime at the rate of single time.

16.9 An employee may elect to be paid for untaken time off in lieu at the time of taking annual leave. The payment will be calculated on single time.

16.10 Only overtime worked at the express request of the employer will be paid.

PART 6 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

17. ANNUAL LEAVE

17.1 Annual leave entitlement - general

17.1.1 Permanent full-time employees will be entitled to four weeks annual leave upon completion of each year of continuous service. Part-time and fixed term employees will be entitled to annual leave on a pro rata basis which shall be calculated in accordance with the ordinary hours worked by such employees.

17.1.2 An employee may elect to be paid an amount in lieu of any additional entitlement accrued to annual leave in that year pursuant to clause 21 - Public holidays.

17.1.3 This payment in lieu will be based on the ordinary hourly earnings the employee would have earned if he/she had taken the extra leave to which he/she was entitled.

17.2 Payment for annual leave

Payment for periods of annual leave given and taken shall be made in advance.

17.3 Proportionate annual leave on termination

If an employee resigns or is dismissed prior to the completion of one full year's employment, the employee shall receive a pro rata annual leave payment.

17.4 Annual leave loading

Employees shall be paid an annual leave loading of 17.5% on fully accrued annual leave, calculated on his/her classification rate nominated in schedule A.

17.5 Time of taking annual leave

17.5.1 An employee shall take all leave accrued at times and in periods mutually agreed to in advance.

17.5.2 The employer may require an employee to take fully accrued leave, six months after such leave has accrued, providing that six weeks notice has been given to the employee.

17.6 Annual leave exclusive of public holidays

17.6.1 If a public holiday falls during an employee's annual leave, the employee shall be allowed one extra day's annual leave, to be taken either at the time of that leave period or accrued to annual leave entitlement.

17.6.2 Where in the case of an emergency the employer finds it necessary to cancel or alter an employee's period of annual leave already agreed, and the employee can show that this alteration has caused him/her financial loss, the employer shall reimburse the employee for such loss, providing that the employee shall be obliged to take reasonable steps to mitigate such loss.

18. PERSONAL LEAVE

18.1 Amount of paid personal leave

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

18.1.1(a) personal illness or injury (sick leave);

18.1.1(b) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or

18.1.1(c) bereavement on the death of an immediate family or household member (bereavement leave).

18.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and is as follows:

Length of time worked for the employer	Personal leave per annum
Less than 13 weeks	3 days
13 weeks or more	13 days

18.1.3 In any year unused personal leave accrues at the rate of the lesser of:

18.1.3(a) 10 days less the number of days of sick leave taken from the current year's personal leave entitlement in that year; or

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

18.1.4 Personal leave accumulates from year to year as set out in clause 18.1.3 but is not paid out on termination of employment.

18.2 Immediate family or household

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

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

18.2.1(b) a member of the employee's household.

18.2.2 The term **immediate family** includes:

18.2.2(a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

18.2.2(b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

18.3 Sick leave

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

18.3.2 Entitlement

The amount of sick leave which an employee may take as sick leave depends on how long he or she has worked for the employer and accrues as follows:

Length of time worked for the employer	Paid sick leave per annum
Less than 13 weeks	Nil
13 weeks or more	10 days

18.3.3 An employee is entitled to use accumulated personal leave for the purpose of sick leave where the current year's sick leave entitlement has been exhausted.

18.3.4 The employer may require the employee to provide a medical certificate stating in so far as is possible the nature of the illness and the length of expected absence.

18.3.5 In the case of an employee who has exhausted their current year's sick leave entitlement or where the employer has reasonable grounds to believe that the employee may be absent for reasons other than sickness or injury, the employer may require the employee to be examined by a medical practitioner

nominated by the employer at the expense of the employer. The employee may request the medical practitioner not to divulge the exact nature of the illness or injury. An employee who refuses to be examined by the nominated medical practitioner shall not be entitled to paid sick leave.

18.3.6 An employee is not entitled to paid sick leave for a period of absence for which he/she is paid workers compensation.

18.3.7 An employee is not entitled to paid sick leave for any injury received from a specific form of recreation, hobby, exercise or other activity which renders the employee prone to recurring injury if the employer gave the employee written notice that the employer had no liability for injury arising from that participation.

18.4 Bereavement leave

18.4.1 An employee is entitled to use up to three days personal leave as bereavement leave on each occasion of the death of a member of the employee's immediate family or household, or daughter-in-law or son-in-law.

18.4.2 Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, the employee will be entitled to three days unpaid bereavement leave.

18.4.3 The employee shall provide notice to the employer as soon as is possible and if requested shall provide proof of the bereavement of the member of the employee's immediate family or household or daughter-in-law or son-in-law.

18.5 Carer's leave

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

18.5.2 A member shall where practicable give notice prior to the absence of:

18.5.2(a) the intention to take leave;

18.5.2(b) the name of the person requiring care and support and his or her relationship to the member;

18.5.2(c) the reasons for taking such leave; and

18.5.2(d) the estimated length of absence.

18.5.3 The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

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

19. PARENTAL LEAVE

[19 substituted by PR935327 ppc 08Jul03; corrected by PR936372 ppc 08Jul03]

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and

full-time employees may elect to work part-time in connection with the birth or adoption of a child.

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

19.1 Definitions

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

19.1.2 Subject to Clause 19.1.3, in this clause **spouse** includes a de facto or former spouse.

19.1.3 In relation to Clause 19.5, **spouse** includes a de facto spouse but does not include a former spouse.

19.1.4 For the purpose of this clause, 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

(b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

19.1.5 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 or absence).

19.2 Basic Entitlement

19.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

19.2.2 Subject to 19.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

(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.

19.3 Maternity Leave

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

(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.

19.3.2 When the employee gives notice under 19.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

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

19.3.4 Subject to Clause 19.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

19.3.5 Where an employee continues to work within the six weeks 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.

19.3.6 Special maternity leave

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

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

(c) Where an employee not then on maternity leave suffers an 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 certified as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

19.3.7 Where leave is granted under Clause 19.3.4, during the period of leave, an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

19.4 Paternity Leave

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

(a) 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; 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:

(i) he will take that period of paternity leave to become the primary care-giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

19.4.2 The employee will not be in breach of Clause 19.4.1 if the failure to give the required proof of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

19.5 Adoption Leave

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

19.5.2 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.

19.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

19.5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

19.5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

19.5.6 An employee seeking to adopt a child is entitled to take 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 paid leave instead.

19.6 Variation of Period of Parental Leave

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

19.7 Parental Leave and Other Entitlements

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

19.8 Transfer to a Safe Job

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

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

19.9 Returning to Work After a Period of Parental Leave

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

19.9.2 Subject to subclause 19.9.3, 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 19.8 hereof, the employee will be entitled to return to the position they 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, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

19.9.3 (a) An employer must not fail to re-engage a casual employee because:

(i) the employee or employee's spouse is pregnant; or

(ii) the employee is or has been immediately absent on parental leave.

(b) 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.

19.10 Replacement Employees

19.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

19.10.2 Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

20. LONG SERVICE LEAVE

The employer will provide long service leave in accordance with an employee's statutory entitlements.

21. PUBLIC HOLIDAYS

21.1 Public holidays - entitlement

21.1.1 Subject to the provisions of this clause, employees shall be entitled to public holidays as set out in this clause without loss of pay.

The following shall be public holidays for the purposes of this award:

21.1.1(a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

21.1.1(b) the following days, as prescribed in the relevant States, Territories or localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours Day, Labour Day, May Day or Labour Day; and

21.1.1(c) in the Australian Capital Territory, Canberra Day; in New South Wales, the first Monday in August; in Victoria, Melbourne Cup Day; in South Australia, the third Monday in May; in Western Australia, Foundation Day; in the Northern Territory, Picnic Day; in Queensland, Show Day; in Tasmania, Regatta Day in Southern Tasmania, and Recreation Day in Northern Tasmania.

21.1.2 Where a day is legislated, declared, proclaimed, gazetted or otherwise prescribed in a State, Territory or locality within a State or Territory in substitution for any of the days specified in clause 21.1.1 above such day shall be the holiday for the purposes of this award in lieu of the day specified.

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

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

21.1.5 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.

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

21.1.7 An employer, with the agreement of the union, may substitute another day for any prescribed in this clause.

21.1.8 An employer and their employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of a majority of affected employees shall constitute agreement.

21.1.9 An agreement pursuant to clause 21.1.8 shall be recorded in writing and be available to every affected employee.

21.1.10 The union shall be informed of an agreement pursuant to clause 21.1.8 and may, within seven days, refuse to accept it. The union will not unreasonably refuse to accept the agreement.

21.1.11 If the union, pursuant to clause 21.1.10, refuses to accept an agreement the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the union.

21.1.12 If no resolution is achieved pursuant to clause 21.1.11, the employer may apply to the Commission for approval of the agreement reached with their employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and the union an opportunity to be heard, the Commission will determine the application.

21.2 Public holidays - penalty rates

21.2.1 Given the operational requirements of the business, an employee may, from time to time be required to work on a public holiday. In this case the employee will either:

21.2.1(a) be paid double ordinary time for all time worked; or

21.2.1(b) have an extra day added to their annual leave entitlement;

as determined by mutual agreement.

21.2.2 Where an employee commences work on a public holiday during non-core hours, all time worked during non-core hours will be paid for at the ordinary time rate plus the non-core penalty rate.

21.3 A full time employee:

21.3.1 who does not regularly work a five day, Monday to Friday week; and

21.3.2 who is not required to work on a public holiday;

will be entitled to:

21.3.3 an additional day off at a time to be agreed between the employer and the employee; or

21.3.4 an extra day added to their annual leave entitlement; or

21.3.5 to be paid, in accordance with clause 12, an additional day's pay at ordinary hourly rates.

21.4 No double dipping

Where a public holiday is substituted for another under clauses 21.1.2, 21.1.3, 21.1.4, 21.1.5 or 21.1.7, the original public holiday is not a public holiday for the purposes of clause 21.2 or 21.3.

PART 7 - MISCELLANEOUS

22. ANTI-DISCRIMINATION

22.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

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

22.3 Nothing in this clause is taken to affect:

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

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

22.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

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

23. LEAVE RESERVED

[23 inserted by PR931985 ppc 08May03]

Leave is reserved to vary the award binding the Australian, Municipal, Administrative, Clerical and Services Union in respect of Foxtel.

SCHEDULE A - CLASSIFICATION AND GRADING SCHEDULE

[Sched A substituted by V001 PR908780 PR935327; corrected by PR936372; substituted by PR956119; PR961133 ppc 08Oct05]

			<u>Minimum Base Rate</u>	
			COLUMN 1	Column 2
			<u>152 hr rate</u>	<u>160 hr rate</u>
1.1	Band 1	Mail Clerk	30626	32638
		Administrative Clerical Assistant		
1.2	Band 2	Tape Operator	32322	34453
		Trainee Technician		
		Assistant Technician		
		Assistant Operator		
		Customer Sales and Service Rep (Entertainment Consultant)		
		Administrative Employee		
1.3	Band 3	Technician	38312	40862
		Operator		
		Senior Administrative Employee		
1.4	Band 4	Senior Technician	40702	43421
		Senior Operator		
		Librarian		
		Supervisor		
		Team Coach		
1.5	Band 5	Supervising Technician	46484	49607
		Supervising Operator		

The wage rates in this section are fixed on the basis stated in clause 11.

The rates of pay in this award include the arbitrated safety net adjustment payable under the *safety Net Review—Wages June 2005* decision [PR002005]. 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.

** end of text **