

AP812511 - Off-Course Agency Employees Award 2001

This AIR consolidated award incorporates all amendments up to and including 30 September 2008 (variation [PR983639](#)).

Clauses affected by the most recent amendment(s) are:

- [7. Wages](#)
- [11. Overtime](#)
- [12. Payment of wages](#)
- [13. Allowances](#)

About this Award:

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AP812511 [AIR Consolidation]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00202 of 1998)

VICTORIAN OFF-COURSE AGENCY EMPLOYEES AWARD 1993

(ODN C No. 30152 of 1993)

[Print K7772 [V0100]]

Various employees	Clerical industry
commissioener whelan	melbourne, 10 DECEMBER 2001

Award simplification.

ORDER

A. Further to the decision [[PR912337](#)] issued by the Commission on 10 December 2001, the above award is varied as follows:

By deleting all clauses and schedules and inserting the following:

1. AWARD TITLE

This award shall be known as the Off-Course Agency Employees Award 2001.

2. ARRANGEMENT

[2 amended by [PR949107](#) [PR968470](#) [PR979602](#)]

1. Award title
2. Arrangement [[PR979602](#)]
3. Anti-discrimination
4. Incidence [[PR979602](#)]
5. Duration and operation of award
6. Definitions [[PR968470](#)]
7. Wages [[PR983639](#)]
8. Traineeships
9. Hours of work
10. Meal and rest periods
11. Overtime [[PR983639](#)]
12. Payment of wages [[PR983639](#)]
13. Allowances [[PR983639](#)]
 - 13.1 Cash controller allowance
 - 13.2 Late nights allowance
 - 13.3 Out-of-hours allowance
 - 13.4 Meal allowance
 - 13.5 Vehicle allowance
 - 13.6 Excess fares and travelling time
 - 13.7 Uniforms and protective clothing
14. Superannuation
15. Staffing of agencies
16. Cash handling and security
17. Accident make-up pay
18. Probation
19. Notice of termination [[PR949107](#)]
20. Public holidays
21. Annual leave
22. Personal leave [[PR968470](#)]
- 22A. Caring responsibilities of casual employees [[PR968470](#)]
- 22B. Bereavement leave [[PR968470](#)]
23. Parental leave [[PR968470](#)]
24. Grievance and dispute settlement procedure [[PR949107](#)]
25. Redundancy [[PR949107](#)]

3. ANTI-DISCRIMINATION

3.1 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.

3.2 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.

3.3 Nothing in this clause is taken to affect:

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

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

3.3.3 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;

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

4. INCIDENCE

This award shall be binding upon:

4.1 The Australian Municipal and Administrative, Clerical and Services Union; and

[**4.2** substituted by [PR979602](#) ppc 25Sep07]

4.2 All employees working in an off-course Tabcorp Agency in Victoria who are engaged by any Agent as defined in clause 6.1 of the Award.

[**4.3** substituted by [PR979602](#) ppc 25Sep07]

4.3 Any person who is or becomes an Agent as defined in clause 6.1 of the Award.

5. DURATION AND OPERATION OF AWARD

5.1 This award shall operate from the first pay period commencing on or after 1 November 2001.

5.2 This award shall remain in force for six months.

6. DEFINITIONS

6.1 **Agent** means a person, firm or company engaged as an agent by Tabcorp principally for the purpose of conducting wagering facilities upon premises which are owned, leased or sub-leased

by Tabcorp; provided that such are neither facilities conducted by Tabcorp in its own right nor are part of a Tabaret as referred to in Division V of the *Racing Act 1958* nor are facilities which contain only Handytabs and/or Handytab Cashier Terminals.

6.1.1 Association means the Victorian Off-Course Agents Association Inc.

6.1.2 Commission means the Australian Industrial Relations Commission.

6.1.3 Tabcorp means the company known as Tabcorp.

6.1.4 Union means the Australian Municipal, Administrative, Clerical and Services Union.

6.2 Regular employees means full-time employees and part-time employees. Any person not specifically engaged as a **regular employee** shall be deemed to be a casual employee. All clauses in this award shall apply to regular employees in agencies.

6.2.1 Full-time employees means employees who are engaged as such and who are ready, willing and available to work regular full-time hours averaging 38 ordinary hours per week.

6.2.2 Part-time employees means employees who are engaged as such and who are ready, willing and available to work a regular pattern or number of hours less than thirty-eight hours per week.

[6.2.3 varied by [PR968470](#) ppc 09Dec05]

6.2.3 Casual employees means employees who are engaged as such under the terms of this award. The following clauses in this award shall apply to casual employees in agencies:

- 6 - Definitions
- 7 - Wages
- 10 - Meal and rest periods
- 12 - Payment of wages
- 13.5 - Vehicle allowance
- 13.6 - Excess fares and travelling time
- 13.7 - Uniforms and protective clothing
- 14 - Superannuation
- 15 - Staffing of agencies
- 16 - Cash handling and security
- 17 - Accident make-up pay
- 22A - Caring responsibilities of casual employees
- 24 - Grievance and settlement procedure

6.3 Classifications of agency employees for pay purposes are defined as follows:

6.3.1 Agency Assistant means an employee who, with direct supervision and instruction, is engaged only on general non-sales work in an Agency, such as posting race lists/results.

6.3.2 Agency Clerk means an employee who, with moderate supervision and instruction, is engaged on general work in an Agency including Agency sales and has satisfactorily completed

the minimum training requirements.

6.3.3 Agency Senior Clerk means an employee who, with limited supervision and instruction, competently performs all the general work in an Agency including Agency sales and has satisfactorily passed the accreditation requirements and demonstrated the ability to perform cash controlling duties as laid down by the procedures manual. Agency Senior Clerks may provide some guidance and assistance to Agency Clerks and Agency Assistants.

[6.4 inserted by [PR968470](#) ppc 09Dec05]

6.4 Immediate family includes:

6.4.1 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

6.4.2 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; and

6.4.3 domestic partner. The phrase **domestic partner** has the meaning given in the *Equal Opportunity Act 1995* (Vic).

7. WAGES

[7.1 substituted by [PR922261](#) [PR933238](#) [PR956233](#); [PR962607](#) ppc 01Dec05]

7.1 The rates of pay to be paid to employees for ordinary hours of work shall be not less than the following:

Classification	Regular			Casual
	Full-time \$ per annum	Full-time \$ per week	Full & part-time \$ per hour	\$ per hour
Agency Assistant	28,127	540.90	14.25	17.80
Agency Clerk	29,312	563.70	14.85	18.55
Agency Senior Clerk	30,207	580.90	15.30	19.10

7.2 Agency Clerks on entering work as employees in the totalizator retail industry may be employed during their first 76 hours of employment as agency trainees during which time they shall be paid not less than 80% of the total adult Agency Clerk rate.

7.3 The hourly rates for casual employees are based on the appropriate regular hourly rate plus a casual loading of 25% calculated to the nearest five cents. Incorporated in the hourly rate for casual employees is an amount for annual leave calculated at 1/12 of the hourly rate for all time worked.

7.4 Junior employees shall be paid the full adult rates, provided that a casual Agency Assistant or Agency Clerk who is less than twenty years of age shall be paid not less than:

Age	Percentage of adult casual rate
At 19 years of age	90
At 18 years of age	80
At 17 years of age	70
At 16 years of age	60

[7.5 varied by [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

7.5 The ordinary rate per hour for casual employees as set out in this clause shall be payable for all times worked to 8.00 p.m. up to a total of twenty hours in one week (Monday to Saturday inclusive). A penalty rate shall be paid to casual employees so as to bring the hourly rate of pay up to \$27.85 for casual Agency Senior Clerks when they are performing all the duties of a cash controller in the absence of the Agent, and up to \$26.20 for all other casual employees, during the following times:

7.5.1 After twenty hours are worked at the ordinary rate in the week (i.e. Monday to Saturday inclusive).

7.5.2 After 8.00 p.m. (Monday to Saturday inclusive).

[7.5.3 varied by [PR922261](#) [PR933238](#); [PR956233](#) ppc 01Dec04]

7.5.3 On Sundays and public holidays.

7.6 A minimum of three hours pay at the appropriate rate shall be paid to a casual employee for each separate attendance.

7.7 Arbitrated safety net adjustment

[7.7 substituted by [PR922261](#) [PR933238](#) [PR956233](#); [PR962607](#) ppc 01Dec05]

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.

8. TRAINEESHIPS

A party to this award shall comply with the terms of National Training Wage Award 2000 [Print

T0813 [N0277]], as varied, as though bound by clause 4 of that award.

9. HOURS OF WORK

9.1 An average of 38 hours per week worked on any day over a work cycle shall constitute ordinary full-time hours of work.

9.2 The number of hours in a work cycle shall be agreed between the agent and the regular employee on the basis that no regular employee works less than ten rostered hours in a work cycle and more than 38 rostered hours in a week. A work cycle shall be permanent unless otherwise agreed between the parties.

9.3 The ordinary hours of work of regular employees shall be determined in advance of a work cycle after consultation between the agent and employees affected, provided that:

9.3.1 The work cycle may extend over seven, fourteen, 21 or 28 consecutive days; and

9.3.2 The roster as it affects an individual employee may be varied at any time by agreement between the employee and their agent; and

9.3.3 There shall not be more than 11.5 ordinary hours of work on any day.

9.3.4 For any separate attendance employees shall be paid a minimum at the appropriate rate as for three hours worked.

9.4 The daily spread of ordinary hours for regular employees shall be from 7.30 a.m. to 8.00 p.m. provided that:

9.4.1 such hours may be varied in respect of an agency or an employee by agreement in writing between the agent and the majority of employees; and

9.4.2 the daily spread of ordinary hours of agencies approved by Tabcorp for late night opening shall be extended to the rostered finish of work for the agency employees on such late nights.

10. MEAL AND REST PERIODS

10.1 As far as practicable, employees shall be allowed a meal break of 30 minutes and a paid rest period of ten minutes for every five hours of work and shall not be required to work during rest periods.

10.2 Meal and rest breaks shall be taken at times mutually convenient to the agent and the employee provided that, in the absence of agreement, the rest period shall be given within 1.5 and 2.5 hours of the commencement of work or the resumption of work after a meal break.

10.3 It is intended that nothing in this clause shall operate so as to interfere with the well established custom and practice of organising meal and rest breaks for employees in agencies in a flexible way so as to fit in with customer needs. By arrangement between the agent and employees, an employee in an agency shall have refreshments, meals and rest breaks and customers' betting needs shall be met in the agency without having to discontinue betting activity. Where

necessary, employees in agencies shall be able to work alone and take refreshments.

11. OVERTIME

[11 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

11.1 A regular employee working in excess of the employee's rostered ordinary hours of work shall be paid at the overtime rate for such work. The overtime rate shall be the employee's ordinary hourly rate plus \$8.75 for each of the first two hours in any work period and \$17.40 for each hour of overtime after the first two hours in any work period. For any separate attendance regular employees shall be paid a minimum at the appropriate rate as for three hours worked.

[11.2 substituted by [PR968470](#) ppc 09Dec05]

11.2 Subject to clauses 11.2.1 and 11.2.2, an agent may require an employee to work reasonable overtime at overtime rates.

11.2.1 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:

11.2.1(a) any risk to employee health or safety;

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

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

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

11.2.1(e) any other relevant matter.

11.2.2 Junior employees shall be given means of notifying their parents or guardians on a day when they are required to work overtime.

11.3 When regular 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 had ten hours off duty they shall be paid overtime at double rates until they have had ten hours off duty.

11.4 Regular employees required to return to duty after their rostered 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 specified in this clause but shall receive a minimum payment as for three hours work. Provided that this 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.

12. PAYMENT OF WAGES

12.1 Wages and allowances up to and including Saturday shall be payable no later than the following

Thursday.

12.2 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.

[12.3 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

12.3 In the event that an employee on balancing at the end of a shift has a net cash shortage the employee shall be liable to repay to the agent any such shortage up to a maximum in any one case of \$760.85, subject to the following conditions:

12.3.1 For the purposes of this clause:

12.3.1(a) **cash shortage** means the amount by which cash in the drawer at a work station on balancing is less than the amount which should be in the drawer to meet the settlement obligations of the agent to Tabcorp in respect of betting and financial transactions as recorded on the computer for that work station.

12.3.1(b) **cash surplus** means the amount by which cash in the drawer at a work station on balancing is more than the amount which should be in the drawer to meet the settlement obligations of the agent to Tabcorp in respect of betting and financial transactions as recorded on the computer for that work station.

12.3.1(c) **net cash shortage** means the amount of cash shortages less any off-set due to cash surpluses.

12.3.2 A net cash shortage shall be reimbursed to the agent if the shortage occurs during the period covered from commencement to completion of an employee's shift and:

12.3.2(a) the employee's work station has been balanced off prior to the employee commencing duty, the employee has sole control of and access to a lockable cash draw, there is a cash shortage at the work station and the cash shortage is not shown to be due to fault on the part of the equipment, the agent or another employee; or

12.3.2(b) the employee admits to having caused the cash shortage or the shortage is otherwise demonstrably the fault of the employee.

12.3.3 Any cash surplus which occurs shall be credited to the employee to be off-set against either an outstanding cash shortage and/or any future cash shortage of the employee in that order of priority.

12.3.4 A net cash shortage shall be repaid in the following manner:

[12.3.4(a) varied by [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

12.3.4(a) the amount due shall be paid by the employee responsible for the shortage at a rate agreed to by the agent and the employee, provided that in the absence of such

agreement the weekly repayments shall be the greater of either \$15.00 or 10% of the employee's total gross weekly remuneration in the four weeks immediately prior to the cash shortage divided by the number of weeks in which the employee worked for the agent in that period; and

12.3.4(b) without limiting the responsibility of the employee to repay the amount due in accordance with this clause, if the employee continues to work for the agent then the agent shall be entitled to deduct the amount due from the employee's weekly wages, provided that any cash surplus which occurs during the period of the repayments shall be immediately offset against the outstanding balance of the net cash shortage.

12.3.5 An agent shall provide an employee with a written weekly statement of any net cash shortage which is being repaid (including the outstanding cash shortage and any offsetting cash surplus) and shall keep an on-going record of this information which shall be available.

12.3.6 In the event that there is a dispute between an agent and an employee with respect to liability, all repayments shall be made and set aside securely by the agent in the employee's name until the dispute has been resolved as per clause 24 - Grievance and dispute settlement procedure, of this award.

12.3.7 No employee, as a result of disputing any matter covered by this clause, shall be detrimentally affected in their employment in the agency.

13. ALLOWANCES

[13.1 substituted by [PR979602](#) ppc 25Sep07]

13.1 Cash controller allowance

An Agency Senior Clerk shall be paid an additional allowance for each hour in which the employee performs all the duties of a cash controller in the absence of the Agent save that there will be no entitlement to be paid an additional allowance where a casual Agency Senior Clerk is entitled to be paid a penalty rate pursuant to clause 7.5.

[13.1.1 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

13.1.2	Regular Agency Senior Clerk	\$2.25 per hour.
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[13.1.2 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

13.1.2	Casual Agency Senior Clerk	\$2.90 per hour.
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13.2 Late nights allowance

[13.2 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

Regular employees working in agencies with a daily spread of ordinary hours approved by Tabcorp for late night opening as prescribed in 9.4.2 will receive an allowance of \$6.30 per hour for such time worked after 8.00 p.m.

13.3 Out-of-hours allowance

[13.3 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

In addition to the ordinary rates of pay set out in clause 7 - Wages, regular employees shall be paid an out-of-hours allowance of \$6.30 for each ordinary hour of work on a Sunday or a public holiday, or on any day Monday to Saturday outside the daily spread of ordinary hours.

13.4 Meal allowance

[13.4.1 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

13.4.1 Casual employees, when required to work more than nine consecutive hours shall be paid meal money of \$8.80 unless the employer has cooking and dining facilities and supplies adequate meals.

[13.4.2 varied by [PR922261](#) [PR933238](#) [PR956233](#) [PR962607](#) [PR975054](#) [PR979601](#); [PR983639](#) ppc 01Oct08]

13.4.2 Provided that after a further four hours a further meal allowance of \$7.00 shall be paid. On request meal money shall be paid on the same day as it becomes due.

13.5 Vehicle allowance

[13.5.1 varied by [PR933238](#) [PR962607](#); [PR975054](#) ppc 01Dec06]

13.5.1 Where the agent 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 59 cents per kilometre travelled.

13.5.2 Where the agent 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 agent.

13.6 Excess fares and travelling time

13.6.1 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.

13.6.2 Where the agent 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.

13.7 Uniforms and protective clothing

Where uniforms and protective clothing are required to be worn the cost of providing and laundering uniforms shall be reimbursed to the employee unless they are provided and laundered by the agent. The agent shall reimburse the employee for the cost of protective clothing unless they provide protective clothing for employees engaged in work damaging to clothing.

14. SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note — [Choice of Superannuation Funds and Award Provisions](#)

14.1 The agent shall make a superannuation contribution to an approved superannuation scheme fund on behalf of each eligible employee in accordance with the provisions of the Superannuation Guarantee legislation.

14.2 An **approved superannuation scheme** means a scheme which complies with the *Occupational Superannuation Standards Act* and Regulations and any other relevant Government requirements.

14.3 Contribution payments shall be made by the agent to the Fund quarterly on the same dates as are set down by the Commissioner of Taxation for PAYE income taxation deductions to be submitted. Such quarterly payments shall cover pay periods which ended during the previous three months.

15. STAFFING OF AGENCIES

It shall be acceptable in an Agency covered by this award for an employee to work alone, provided always that the employee is paid the appropriate rate of remuneration set out in this award for such work.

16. CASH HANDLING AND SECURITY

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

17. ACCIDENT MAKE-UP PAY

17.1 An agent shall pay employees accident make-up pay where employees sustain injuries which qualify for compensation under the provisions of the then current Victorian legislation relating to workers compensation.

17.2 Accident make-up pay means that an agent 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.

17.3 The payment made by an agent shall be limited to a maximum period of 39 weeks for any one injury.

18. PROBATION

18.1 A three month probationary employment period shall apply for all new regular employees. By agreement between the agent and the employee, the probation period may be extended for up to a further three months.

18.2 The period of notice of termination provided in clause 19 - Termination of employment, shall not apply to a regular employee who is terminated during their probationary employment period.

19. NOTICE OF TERMINATION

[19 Termination of employment title changed and substituted by [PR949107](#) ppc 08Jul04]

19.1 Notice of termination by employer

19.1.1 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

19.1.2 In addition to the notice in 19.1.1, 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.

19.1.3 Payment in lieu of the prescribed notice in 19.1.1 and 19.1.2 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.

19.1.4 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:

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

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

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

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

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

19.1.5(b) to apprentices;

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

19.1.5(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

19.1.5(e) to casual employees.

19.1.6 Continuous service is defined in clause 21.3.1.

19.2 Notice of termination by an employee

19.2.1 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.

19.2.2 If an employee fails to give the notice specified in 19.1.1 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 19.1.4.

19.3 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.

19.4 Transmission of business

Where a business is transmitted from one employer to another, as set out in clause 25 - 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.

20. PUBLIC HOLIDAYS

20.1 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;

or any other day substituted by Act of Parliament or Proclamation or by agreement between the agent and the employee for any of the abovementioned holidays.

20.2 Regular employees who are not required to work shall be entitled to public holidays without loss of pay.

21. ANNUAL LEAVE

21.1 Entitlement

21.1.1 Except as otherwise provided in this award, all regular employees shall at the end of each year of their employment by an agent, become entitled to four weeks annual leave on ordinary pay. Annual leave will be calculated on agreed standard regular hours.

21.1.2 The annual leave shall be given and taken in four consecutive weeks, or if the employees and the agent agree, in such other periods as may be mutually agreed.

21.1.3 If the employees and the agent so agree the annual leave may be taken wholly or partly in advance before the employees have become entitled to the annual leave.

21.1.4 The annual leave shall be given by the agent and shall be taken by the employees before the expiration of two years after the leave right accrues or as agreed between the employee and the agent.

21.1.5 Except as provided in 21.2, payment shall not be made by an agent 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.

21.1.5(a) Except in the case of mutual consent to the contrary the agent shall give individual employees at least one month's notice of the date from which their annual leave shall be taken.

21.1.5(b) The agent shall pay individual employees their ordinary pay for the annual leave, in advance before the commencement of their leave.

21.1.6 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.

21.1.7 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.

21.2 Payment on termination

21.2.1 Where the employment of employees who have become entitled to one or more annual leave periods provided by this award is terminated, the agent 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.

21.2.2 Paragraph 21.2.1 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.

21.2.3 Nothing in 21.2.1 or 21.2.2 affects the obligation of an agent to give, or employees to take, annual leave in accordance with this award.

21.2.3(a) This subclause applies with respect to every period of employment of employees by any agent 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.

21.2.3(b) Where the employment of individual employees by any agent is terminated at the end of a period of employment to which this subclause applies, the agent shall forthwith pay to those employees, in addition to all other amounts due to them an amount equal to 1/12 of their ordinary pay for that period of employment.

21.2.4 Where the annual leave under 21.1 or any part hereof has been taken in advance by employees pursuant to 21.1.3 and:

21.2.4(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

21.2.4(b) the sum paid by the agent to the employees as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the agent is required to pay to the employees under 21.2.3(a) of this clause;

21.2.4(c) the agent shall not be liable to make any payment to the employees under 21.2.3(a) of this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the employees upon termination.

21.2.5 For the purposes of the two last preceding subclauses:

21.2.5(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.

21.2.5(b) Week in relation to any employees means the employees' ordinary working week.

21.2.5(c) Employees means any persons employed by any agent to do any work for hire or reward.

21.3 Continuity of service

21.3.1 For the purposes of this award a year of employment shall be deemed to be unbroken notwithstanding;

21.3.1(a) any annual leave or long service leave taken therein;

21.3.1(b) any interruption or ending of the employment by the agent if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;

21.3.1(c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;

21.3.1(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the agent;

21.3.1(e) 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 21.3.1(1), 21.3.1(b) or 21.3.1(c) of this subclause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs 21.3.1(d) and 21.3.1(e) of this subclause 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.

21.4 Annual leave loading

In addition to the annual leave payment prescribed above, employees shall receive an annual leave loading of 17.5%. Provided that the loading shall only be payable in respect of a maximum of four weeks' annual leave in any one year.

22. PERSONAL LEAVE

[22 substituted by [PR968470](#) ppc 09Dec05]

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 22A.

22.1 Amount of paid personal leave

22.1.1 Paid personal leave is available to an employee, other than a casual employee, when they are absent:

due to personal illness or injury; or

for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.

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

22.1.2(a) 3-1/6 hours ordinary pay for each complete month of service will be available in the first year of service;

22.1.2(b) 76 hours ordinary pay will be available per annum in the second and subsequent years of service.

22.1.3 In any year unused personal leave accrues by the lesser of:

22.1.3(a) 3-1/6 hours ordinary pay for each complete month of service in the first year of service less the amount of personal leave taken; or

22.1.3(b) 76 hours ordinary pay in any subsequent year of service less the amount of personal leave taken during the year; or

22.1.3(c) the balance of that year's unused personal leave.

22.1.4 Personal leave may be cumulative from year to year provided:

22.1.4(a) employees remain in the service of the one agent; or

22.1.4(b) any successor of the agent.

22.2 Personal leave for injury or sickness

An employee is entitled to use the full amount of their personal leave entitlement, including accrued leave, for the purposes of personal illness or injury, subject to the conditions set out in this clause.

22.3 Personal leave to care for an immediate family or household member

22.3.1 An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

22.3.2 By agreement between an agent and an individual employee, the employee may access an

additional amount of their accrued personal leave for the purposes set out in 22.3.1, beyond the limit set out in 22.3.1. In such circumstances, the agent and the employee shall agree upon the additional amount that may be accessed.

22.4 Evidence supporting claim

22.4.1 The employee must, if required by the agent, establish by production of a medical certificate or statutory declaration that the employee was unable to work because of injury or personal illness.

22.4.2 The employee must, if required by the agent, 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.

22.5 Unpaid personal leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The agent and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of 22.4 are met

22A. CARING RESPONSIBILITIES OF CASUAL EMPLOYEES

[22A inserted by [PR968470](#) ppc 09Dec05]

22A.1 Subject to the evidentiary requirements in 22.4, casual employees are entitled not to be available to attend work, or to leave work:

22A.1.1 if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or

22A.1.2 upon the death in Australia of an immediate family or household member.

22A.2 The agent and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

22A.3 An agent must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an agent to engage or not to engage a casual employee are otherwise not affected.

22B. BEREAVEMENT LEAVE

[22B inserted by [PR968470](#) ppc 09Dec05]

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 22A.

22B.1 Paid leave entitlement

An employee is entitled to up to three days bereavement leave on each occasion of the death of either a member of the employee's immediate family or household.

22B.2 Unpaid leave entitlement

An employee may take unpaid bereavement leave by agreement with the agent.

22B.3 Proof of such a death shall be furnished by the employee to the satisfaction of the agent.

23. PARENTAL LEAVE

[23 substituted by [PR922261](#); [PR968470](#) ppc 09Dec05]

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.

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

An **eligible casual employee** means a casual employee:

- (a) employed by an agent 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.

For the purposes of this clause, **continuous service** is work for an agent on a regular and systematic basis (including any period of authorised leave or absence).

An agent 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.

The rights of an agent in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

23.1 Definitions

23.1.1 For the purposes of this clause **child** means a child of the employee under school age, or a person under school age 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.

23.1.2 Subject to clause 23.1.3 hereof, in this clause, **spouse** includes a de facto or former spouse.

23.1.3 In relation to clause 23.7 hereof, **spouse** includes a de facto spouse but does not include a former spouse.

23.2 Basic entitlement

23.2.1 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.

23.2.2 Subject to 23.5.6, 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:

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

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

23.3 Variation of parental leave

Where an employee takes leave under clause 23.2.1 or 23.4.1(b), unless otherwise agreed between the agent and employee, an employee may apply to their agent to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement in clause 23.2 or the right to request in clause 23.4.

23.4 Right to request

23.4.1 An employee entitled to parental leave pursuant to the provisions of clause 23.2 may request the agent to allow the employee:

23.4.1(a) to extend the period of simultaneous unpaid parental leave provided for in clauses 23.2.2(a) and 23.2.2(b) up to a maximum of eight weeks;

23.4.1(b) to extend the period of unpaid parental leave provided for in clause 23.2.1 by a further continuous period of leave not exceeding 12 months;

23.4.1(c) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

23.4.2 The agent shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the agent's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

23.4.3 Employee's request and agent's decision to be in writing

The employee's request and the agent's decision made under clauses 23.4.1(b) and 23.4.1(c) must be recorded in writing.

23.4.4 Request to return to work part-time

Where an employee wishes to make a request under clause 23.4.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

23.5 Maternity leave

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

23.5.1(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least ten weeks;

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

23.5.2 When the employee gives notice under 23.5.1(a) hereof 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.

23.5.3 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.

23.5.4 Subject to clause 23.2.1 hereof and unless agreed otherwise between the agent and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

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

23.5.6 Special maternity leave

23.5.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 23

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.

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

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

23.5.7 Where leave is granted under clause 23.5.4 hereof, during the period of leave an employee may return to work at any time, as agreed between the agent and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

23.6 Paternity leave

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

23.6.1(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

23.6.1(b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and

23.6.1(c) except in relation to leave taken simultaneously with the child's mother under clauses 23.2.2(a), 23.2.2(b) and 23.4.1(a), a statutory declaration stating:

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

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

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

23.6.2 The employee will not be in breach of clause 23.6.1 hereof 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.

23.7 Adoption leave

- 23.7.1** The employee will notify the agent 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.
- 23.7.2** Before commencing adoption leave, an employee will provide the agent with a statutory declaration stating:
- 23.7.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
 - 23.7.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - 23.7.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 23.7.3** An agent may require an employee to provide confirmation from the appropriate government authority of the placement.
- 23.7.4** Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the agent immediately and the agent will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- 23.7.5** 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.
- 23.7.6** An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the agent 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 agent may require the employee to take such leave instead.

23.8 Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under clause 23.4.

23.9 Transfer to a safe job

- 23.9.1** 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 agent 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.

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

23.10 Returning to work after a period of parental leave

- 23.10.1** 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.

- 23.10.2** An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 23.9, the employee will be entitled to return to the position they held immediately before such transfer.

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

- 23.10.4** An eligible casual employee who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on parental leave.

- 23.10.5** Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the agent shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.

23.11 Replacement employees

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

- 23.11.2** Before an agent engages a replacement employee the agent must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

23.12 Communication during parental leave

- 23.12.1** Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the agent shall take reasonable steps to:

23.12.1(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

23.12.1(b) provide an opportunity for the employee to discuss any significant effect the change

will have on the status or responsibility level of the position the employee held before commencing parental leave.

23.12.2 The employee shall take reasonable steps to inform the agent about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

23.12.3 The employee shall also notify the agent of changes of address or other contact details which might affect the agent's capacity to comply with 23.12.1.

24. GRIEVANCE AND DISPUTE SETTLEMENT PROCEDURE

24.1 The following procedures are designed to assist in the resolution of grievances and disputes on any employment matter by local consultation without confrontation or interruption of work:

24.1.1 The matter in the first instance shall be raised between individual employees and their agent. The earliest possible advice shall be given on any issue or problem that may give rise to a grievance or dispute.

24.1.2 If local discussions are unsuccessful, discussions may be held between the employees, an employee representative and the agent, with assistance if desired from the Association.

24.1.3 Failing satisfaction, the matter can be referred to the Commission for determination.

24.2 The procedures set out in this clause shall apply to any grievance or dispute concerning any local matter affecting the operation of this award or the employment of any employee, including classification, the introduction of regular employment or any other matter.

24.3 The procedures of this clause shall not in any way limit the rights of any party to seek the assistance of the Commission on any matter.

24.4 Without prejudice to any party, and except where a bona fide safety issue is involved, work shall continue in accordance with the award while matters are negotiated in good faith and/or are considered by the Commission.

24.5 Redundancy disputes

[24.5 inserted by [PR949107](#) ppc 08Jul04]

24.5.1 Paragraphs 24.5.2 and 24.5.3 impose additional obligations on an employer where an employer contemplates termination of employment due to redundancy and a dispute arises (a **redundancy dispute**). These additional obligations do not apply to employers who employ fewer than 15 employees.

24.5.2 Where a redundancy dispute arises, and if it has not already done so, an employer must provide affected employees and the relevant union or unions (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.

- 24.5.3** 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.

25. REDUNDANCY

[25 substituted by [PR949107](#) ppc 08Jul04]

25.1 Definitions

- 25.1.1 Business** includes trade, process, business or occupation and includes part of any such business.

- 25.1.2 Redundancy** occurs where an 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.

- 25.1.3 Small employer** means an employer who employs fewer than 15 employees.

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

- 25.1.5 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.

25.2 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.

25.3 Severance pay

25.3.1 Severance pay – other than employees of a small employer

An employee, other than an employee of a small employer as defined in 25.1, 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 25.1.

25.3.2 Severance pay – employees of a small employer

An employee of a small employer as defined in 25.1 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 over	8 weeks' pay

* **Week's pay** is defined in 25.1.

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

25.3.4 Continuity of service shall be calculated in the manner prescribed by clause 21.3.1. Provided that service prior to 8 July 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 25.3.2.

25.3.5 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].

25.4 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 19 - 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.

25.5 Alternative employment

25.5.1 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.

25.5.2 This provision does not apply in circumstances involving transmission of business as set in 25.7.

25.6 Job search entitlement

25.6.1 During the period of notice of termination given by the employer in accordance with 19.1, 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.

25.6.2 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.

25.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 19.3.

25.7 Transmission of business

25.7.1 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:

25.7.1(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

25.7.1(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 transmitter; and

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

25.7.2 The Commission may vary 25.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

25.8 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.

25.9 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.

SCHEDULE A

[Schedule A deleted by [PR979602](#) ppc 25Sep07]