

AP831581CRV - Victorian Legal Professional, Clerical and Administrative Employees Award 2004

This AIR consolidated award incorporates all amendments up to and including 30 September 2008 (variation [PR983638](#)).

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

[22. Allowances](#)

About this Award:

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AP831581CRV [Pre-Reform 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. 1200 of 1998)

**VICTORIAN LEGAL PROFESSIONAL, CLERICAL AND ADMINISTRATIVE
EMPLOYEES AWARD 1993**

(ODN C No. 32027 of 1993)

[AW801883 Print L1130]

Clerical industry	
senior deputy president lacy	MELBOURNE, 15 JANUARY 2004

Award simplification.

ORDER

A. Further to the decision issued by the Commission on 15 January 2004, [[PR942718](#)] the above award is varied as follows:

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

PART 1 - APPLICATION AND OPERATION

1. TITLE

This award shall be known as the Victorian Legal Professional, Clerical and Administrative Employees Award 2004.

2. ARRANGEMENT

[2 amended by [PR949305](#) [PR959921](#) [PR968465](#)]

Part 1 - application and operation

1. Title
2. Arrangement [[PR968465](#)]
3. Application
4. Who is bound by this award
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20. Arbitrated safety net adjustment [[PR959921](#)]
21. Federal minimum wage [[PR959921](#)]
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- [24. Special conditions of employment - articulated clerks, law students and work experience clerks](#)
- [25. Superannuation](#)
- [26. Stand down of employees](#)

Part 6 - hours of work and related matters

- [27. Hours of work](#)
- [28. Roster](#)
- [29. Overtime and call back \[PR948301\]](#)
- [30. Meal breaks and rest breaks](#)

Part 7 - types of leave

- [31. Annual leave \[PR968465\]](#)
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- [32A. Bereavement leave \[PR968465\]](#)
- [33. Parental leave \[PR968465\]](#)
- [34. Jury service](#)
- [35. Public holidays](#)
- [36. Long service leave](#)
- [37. Accident pay](#)

Schedule a - responsency list

3. APPLICATION

This award applies to employees as defined at 7.4.

4. WHO IS BOUND BY THIS AWARD

[4 see also Common Rule Declaration [PR956287](#) appended to this award]

This award binds:

- 4.1** All the respondent employers in Schedule A - Responsency list, in regards to those employees who are provided for under the classification contained in clause 23 - Classifications, whether members of the union or not (including for the occupation of any person employed in the practice of a barrister and solicitor but not including a barrister and solicitor serving not more than one year for the purpose of gaining experience).
- 4.2** Only the Victorian operations of the employer's enterprises for the respondent employers.
- 4.3** The ASU, its members, officers and delegates.

5. PREVIOUS AWARD

- 5.1** This award replaces the Victorian Legal Professional, Clerical and Administrative Employees Award 1993 - as amended [AW801883 Print L1130].
- 5.2** The making of this award does not affect any entitlements accrued to employees nor any

obligation accrued by an employer under the Victorian Legal Professional, Clerical and Administrative Employees Award 1993 [AW801883 Print L1130].

6. COMMENCEMENT AND TERM OF OPERATION

[6 see also Common Rule Declaration [PR956287](#) appended to this award]

This award will come into force from the first pay period commencing after 15 January 2004 and shall remain in force for a period of twelve months.

7. DEFINITIONS

In this award:

- 7.1 **Act** means the *Workplace Relations Act 1996*.
- 7.2 **ASU** means the Australian Municipal, Administrative, Clerical and Services Union.
- 7.3 **Commission** means the Australian Industrial Relations Commission.
- 7.4 **Employee** means any person engaged by the respondent employers provided for under the award in the classification structure at clause 23 - Classifications.
- 7.5 **Employer** means any organisation or entity contained in Schedule A - Respondency list.
- 7.6 **Articled clerk** is the classification as set out at grade 4 in the classification structure.
- 7.7 **Law clerk** means a clerk who is engaged for the major part of their time in the interviewing of clients, preparation of documents and general work assisting a barrister and solicitor in her/his practice, but shall not include Account clerks, Articled clerks, law students, Titles office clerks, Receptionists and employees principally engaged in word processing, computer use, filing, machine operation, switchboard, delivery of documents or duties of a routine nature.
- 7.8 **Senior law clerk** means a Law clerk who has served over 21 months as a Law clerk in the industry and who are performing for the major part of their time, the general work of, or work requiring at least the same degree of skill and responsibility as that of probate, conveyancing or common law clerk activities.
- 7.9 **Solicitor** means any employee holding a practising certificate in accordance with the *Legal Profession Practice Act 1958* as amended.
- 7.10 **Law students** shall mean persons employed as such (other than Articled clerks) who are engaged in the course of study prescribed for those intending to qualify for admission as barristers and solicitors. Such persons shall be paid 2/3rds of the weekly rate of Grade 3 legal clerical officer.
- 7.11 **Work experience clerk** shall mean persons, whether students or not, who are employed for not more than two months in any consecutive period of twelve months for the purposes of gaining experience, but does not include Law students or any person who is undertaking work

experience to the provisions of the Education Act. Such persons shall be paid 1/3rd of the weekly rate of Grade 3 - legal clerical officer.

7.12 Council of legal education means the Council of Legal Education constituted by the *Legal Profession Practice Act 1958* as amended.

7.13 Legal education rules means the Rules of the Council of Legal Education made pursuant to the *Legal Profession Practice Act 1958* as amended.

[7.14 inserted by [PR968465](#) ppc 09Dec05]

7.14 Immediate family includes:

7.14.1 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

7.14.2 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

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

8. ANTI-DISCRIMINATION

8.1 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.

8.2 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.

8.3 Nothing in this clause is taken to affect:

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

8.3.2 junior rates of pay;

8.3.3 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;

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

9. INDEX OF FACILITATIVE PROVISIONS

9.1 A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise or workplace concerned.

[9.2 varied by [PR968465](#) ppc 09Dec05]

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

Subject matter	Clause number
Payment of salary	18
Ordinary hours of work	27.1
Ordinary hours of work - continuous shift workers	27.2.3
Ordinary hours of work - non-continuous	27.3.2
Method of arranging ordinary working hours	27.4
Special provisions for shift workers - definitions	27.7.1(b)
Rate for working on Sunday and public holiday shifts	27.7.4(d)(i)
Overtime and call back	29.1.1(c)
Rest period after overtime	29.1.3(d)
Flexibility in relation to meal breaks	30.1.1
Conversion of period of leave to hourly entitlement	31.2
Leave before due date	31.8.1
Variation of parental leave	33.3
Public holidays	35.7

PART 2 - ENTERPRISE FLEXIBILITY

10. ENTERPRISE FLEXIBILITY PROVISIONS

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

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

- 10.1** a consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise will be established;
- 10.2** for the purposes of the consultative process the employees may nominate the ASU or another to represent them;
- 10.3** where agreement is reached an application shall be made to the Commission.

PART 3 - DISPUTE RESOLUTION

11. DISPUTE RESOLUTION PROCEDURE

11.1 In the event of a dispute arising in the workplace or over the application of this award the procedure to be followed to resolve the matter will be as follows:

11.1.1 the employee and his/her supervisor meeting and conferring on the matter; and

11.1.2 if the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and management which may include the Human Resources Department and in the absence of resolution with more senior levels of management; and

11.1.3 if the matter is still not resolved, then there may be further discussions between the employee and his or her nominated representative, if any, which may include a workplace representative of the ASU or later any other representative of the ASU prior to invoking 11.2.

11.2 If the matter remains unresolved it may be submitted to the Australian Industrial Relations Commission.

11.3 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

11.4 The parties agree that all endeavours will be made to resolve the issue without resort to the Commission.

11.5 If the provisions of 11.1 and 11.2 all fail to resolve the matter in dispute, then the parties reserve the right to pursue such action as considered necessary.

11.6 Dispute resolution procedure training leave

11.6.1 An eligible employee representative will be entitled to, and the employer will grant, up to five days training leave with pay to attend courses which are directed at the enhancement of the operation of the dispute resolution procedure including its operation in connection with this award and with the *Workplace Relations Act 1996*, or with any relevant certified agreement.

11.6.2 An employee representative or the ASU shall give the employer six weeks of notice of the employee representative's intention to attend such courses and the leave to be taken, or such shorter period of notice as the employer may agree to accept.

11.6.3 The notice to the employer shall include details of the type, content and duration of the course to be attended.

11.6.4 The taking of such leave shall be arranged having regard to the operational requirements of the employer so as to minimise any adverse effect on those requirements.

11.6.5 An employee representative taking such leave shall be paid all ordinary time earnings which normally become due and payable during the period of leave.

11.6.6 Leave of absence granted pursuant to this clause shall count as service for all purposes of this award.

11.6.7 A dispute in relation to:

11.6.7(a) the granting of leave to an employee for the purpose of attending a course which is not an agreed course, or not a course approved by agreement between the Australian Services Union; or

11.6.7(b) an alleged inability to make adequate staffing arrangements to meet the operational requirements of the employer,

shall be resolved in accordance with the procedure set out in this clause provided that the procedure can be activated for this purpose either by the employer, the Australian Services Union or the employee.

11.6.8 The dispute resolution procedure is activated when an employer advises the employee representative or the Australian Services Union that the employer will not or may not grant the leave. If the dispute resolution procedure is not so activated by or on behalf of the relevant employer within seven days of the receipt of the notice of intention to attend the course and take leave, the leave is to be granted.

11.6.9 For the purpose of determining the entitlement of employee representatives to dispute resolution procedure training leave, an eligible employee representative:

11.6.9(a) Is a shop steward, a delegate, or an employee representative duly elected or appointed by the employees in a workplace generally or collectively for all or part of a workplace;

11.6.9(b) Is within the class and number of representatives entitled from year to year to take paid dispute resolution procedure training leave according to the following quota table:

No. of employees employed by an employer in enterprise or workplace	Max no. of eligible employees representatives entitled per year commencing 1 July 2001
5-15	1
16-30	2
31-50	3
51-90	4
More than 90	5

11.6.9(c) Provided that if the number of eligible employee representatives exceeds the quota at any particular time for a relevant enterprise or workplace, priority of entitlement for the relevant year shall be resolved by agreement between those entitled, or if not agreed, be given to the more senior of the employee representatives otherwise eligible who seeks leave.

11.6.9(d) For purposes of applying the quota table employees employed by an employer in enterprise or workplace are employees covered by the award, employed by the eligible employee representative's employer who are full-time, part-time or casual employees with six months or more service, being employees engaged in the enterprise or workplace to which the procedure established under this clause applies; or if no such procedure is established for a readily identifiable enterprise or workplace, being employees engaged by the employer in the employment covered by the award.

11.6.10 Without limiting the generality of courses that may qualify for purposes of this clause, a course directed at the enhancement of the operation of the dispute resolution procedures includes a course relating to that subject matter which is a course:

agreed between the employer and the relevant eligible employee representative; or

approved jointly by the employer and the Australian Services Union.

11.7 Redundancy disputes

[11.7 inserted by [PR949305](#) ppc 01Jul04]

11.7.1 Paragraphs 11.7.2 and 11.7.3 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.

11.7.2 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.

11.7.3 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.

12. POSTING OF AWARD

A copy of this award shall be exhibited by the employer at its premises in a place, or in places, accessible to all employees.

PART 4 - EMPLOYMENT RELATIONSHIP

13. TYPES OF EMPLOYMENT

13.1 Employees covered by this award will be employed in one of the following categories:

13.1.1 full-time employees; or

13.1.2 part-time employees; or

13.1.3 casual employees.

13.2 At the time of engagement an employer will, in writing, inform each employee of the terms of the engagement under this award and in particular whether he/she is to be full-time, part-time or casual.

13.3 Full-time employee

A full-time employee is one engaged as such. Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in the award.

13.4 Part-time employee

13.4.1 An employee may be engaged to work on a part-time basis involving a regular pattern of hours which shall average less than 38 hours per week. An employee so engaged shall be paid per hour 1/38th of the weekly rate prescribed by clause 19 - Salaries, for the work performed.

13.4.2 Before commencing part-time employment, the employee and the employer must agree:

upon the hours to be worked by the employee, the days upon which they will be worked and the commencing and finishing times for the work;

upon the classification applying to the work to be performed.

13.4.2(a) The terms of this agreement may be varied by consent.

13.4.2(b) The terms of this agreement or any variation to it shall be in writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

13.4.3 The terms of this award shall apply pro rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38 hours.

13.4.4 A part-time employee who is required by the employer to work in excess of the hours agreed upon in accordance with 13.4.2 shall be paid overtime in accordance with clause 29 - Overtime and call back.

13.5 Fixed term employment

13.5.1 Subject to the terms of this award and the Act, a full-time or part-time employee

may be employed on basis for a specific period of time or for specific task/s.

- 13.5.2** An employer may employ a full-time or part-time employee for a fixed term or for a specific project or task in which case the employment will not be ongoing. The fixed term nature of the employment will be made clear at the time of engagement in writing and shall be retained by the employer. The employer shall provide a copy to the employee.
- 13.5.3** An employee engaged in accordance with this clause is for all purposes of the award a full-time or part-time employee, except where otherwise specified in this award.
- 13.5.4** Service under a contract of employment for a specific period of time or specific task/s shall form part of an employee's period of continuous service, where such employee is engaged as a full-time or part-time employee immediately following such contract of employment.

14. CASUALS

- 14.1** A casual employee is an employee engaged as such.
- 14.2** A casual employee will be engaged by the prescribed rate for the classification as set out in clause 19 - Salaries, plus an additional loading of 25%. A casual employee will be paid for a minimum of four hours in respect of each day that the casual employee is engaged.
- 14.3** The following clauses of this award do not apply to casual employees:
- clause 16 - Termination of employment;
 - clause 17 - Redundancy;
 - clause 31 - Annual leave;
 - clause 32 - Personal leave;
 - clause 33 - Parental leave (except as specifically provided for);
 - clause 34 - Jury service.

14.4 Caring responsibilities

[14.4 inserted by [PR968465](#) ppc 09Dec05]

- 14.4.1** Subject to the evidentiary and notice requirements in 32.5 and 32.6, casual employees are entitled not to be available to attend work, or to leave work:
- 14.4.1(a)** 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
 - 14.4.1(b)** upon the death in Australia of an immediate family or household member.
- 14.4.2** The employer 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.

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

15. PROBATIONARY PERIOD

[15 see also Common Rule Declaration [PR956287](#) appended to this award]

15.1 In the case of employees (other than casuals) employers may, by providing an employee at the point of engagement with advice in writing, engage an employee on a probationary basis for a period not exceeding four weeks.

15.2 The written advice shall state clearly that employment is offered for a probationary period which shall be specified and the employee will be provided with written terms of probation.

15.3 Probationary employees may give, or be given, notice on the following basis:

First week of service	1 days notice
Second week of service	2 days notice
Third week of service	3 days notice
Fourth week of service or payment in lieu thereof	4 days notice

16. NOTICE OF TERMINATION

[16 Termination of employment title changed and substituted by [PR949305](#) ppc 01Jul04]

16.1 Notice of termination by employer

16.1.1 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

16.1.2 In addition to the notice in 16.1.1, 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.

16.1.3 Payment in lieu of the prescribed notice in 16.1.1 and 16.1.2 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.

16.1.4 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:

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

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

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

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

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

16.1.5(b) to employees engaged for a specific period of time or for a specific task or tasks;

16.1.5(c) 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

16.1.5(d) to casual employees.

16.1.6 Continuous service is defined in clause 31.7.

16.2 Notice of termination by an employee

16.2.1 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.

16.2.2 If an employee fails to give the notice specified in 16.1.1 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 16.1.4.

16.3 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.

16.4 Transmission of business

Where a business is transmitted from one employer to another, as set out in clause 17 - 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.

17. REDUNDANCY

[17 substituted by [PR949305](#) ppc 01Jul04]

17.1 Definitions

17.1.1 Business includes trade, process, business or occupation and includes part of any such business.

17.1.2 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.

17.1.3 Small employer means an employer who employs fewer than 15 employees.

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

17.1.5 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.

17.2 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.

17.3 Severance pay

17.3.1 Severance pay – other than employees of a small employer

An employee, other than an employee of a small employer as defined in 17.1, 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 17.1.

17.3.2 Severance pay – employees of a small employer

An employee of a small employer as defined in 17.1 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 17.1.

17.3.3 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.

17.3.4 Continuity of service shall be calculated in the manner prescribed by clause 31.7. Provided that service prior to 1 July 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 17.3.2.

17.3.5 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].

17.4 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 16 - 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.

17.5 Alternative employment

17.5.1 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.

17.5.2 This provision does not apply in circumstances involving transmission of business as set in 17.7.

17.6 Job search entitlement

17.6.1 During the period of notice of termination given by the employer in accordance with 16.1, 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.

17.6.2 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.

17.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 16.3.

17.7 Transmission of business

17.7.1 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:

17.7.1(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

17.7.1(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

transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

17.7.2 The Commission may vary 17.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

17.8 Employees exempted

This clause does not apply to:

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

17.9 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 5 - WAGES AND RELATED MATTERS

18. PAYMENT OF SALARY

[18.1 see also Common Rule Declaration [PR956287](#) appended to this award]

18.1 An employee will be paid fortnightly unless the employer and the employee otherwise agree.

18.2 Payments of salary will be made on a day selected by the employer by electronic funds transfer direct to a bank or like account nominated by the employee unless the employer and the employee agree to some other method of payment.

19. SALARIES

[19 see also Common Rule Declaration [PR956287](#) appended to this award]

[19.1 varied by [PR948301](#); [PR959921](#) ppc 06Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by [PR956287](#))]

19.1 The following weekly minimum wages shall apply to the full-time ordinary hours worked by employees provided for in the classification structure in clause 23 - Classifications:

Grade and title	Award Rate
	per week
	\$
Grade 1 Legal Clerical Assistant	501.10

Grade 2 Legal Clerical Assistant	544.50
Grade 3 Legal Clerical Officer Entry Level	578.20
Grade 4 Legal Clerical Officer/Articled Clerk	619.90
Grade 5 Legal Clerical & Administrative Officer	680.90
Grade 6 Law Clerk/Solicitor	722.20
Grade 7 Legal Administrative & Professional Officer	
Grade 7A 2nd Year of Service	784.80
Grade 7B 3rd Year of Service	822.50

19.2 Supported wage system

19.2.1 This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this agreement/award. In the context of this clause, the following definitions will apply:

19.2.1(a) Supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in *Supported Wage System: Guidelines and Assessment Process*.

19.2.1(b) Accredited assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.

19.2.1(c) Disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

19.2.1(d) Assessment instrument means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

19.2.2 Eligibility criteria

19.2.2(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this agreement/award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

19.2.2(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this agreement/award relating to the rehabilitation of employees who are injured in the course of their employment.

19.2.2(c) This clause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to

people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act*, or if a part only has received recognition, that part.

19.2.3 Supported wage rates

19.2.3(a) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award/agreement for the class of work which the person is performing according to the following schedule:

Assessed capacity (clause 19.2.4)	Prescribed award rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

[19.2.3(b) varied by [PR959921](#); [PR968465](#) ppc 09Dec05]

19.2.3(b) Provided that the minimum amount payable shall be not less than \$62 per week.

19.2.3(c) * Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

19.2.4 Assessment of capacity

For the purpose of establishing the percentage of the award rate to be paid to an employee under this award/agreement, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument by either:

19.2.4(a) The employer and a union party to the award/agreement, in consultation with the employee or, if desired by any of these;

19.2.4(b) The employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

19.2.5 Lodgment of assessment instrument

19.2.5(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be

lodged by the employer with the Registrar of the Australian Industrial Relations Commission.

- 19.2.5(b)** All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

19.2.6 Review of assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the supported wage system.

19.2.7 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this award/agreement paid on a pro rata basis.

19.2.8 Workplace adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

19.2.9 Trial period

- 19.2.9(a)** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- 19.2.9(b)** During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

[19.2.9(c) varied by [PR959921](#); [PR968465](#) ppc 09Dec05]

- 19.2.9(c)** The minimum amount payable to the employee during the trial period shall be no less than \$62 per week.

- 19.2.9(d)** Work trials should include induction or training as appropriate to the job being trialled.

- 19.2.9(e)** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of

employment shall be entered into based on the outcome of assessment under 19.2.4 hereof.

19A. TRANSITIONAL WAGE RATES FOR VICTORIA – APPLICATION OF COMMON RULE AWARD

[19A inserted by [PR959921](#) ppc 07Jun05]

19A.1 This clause contains the transitional rates of pay and allowances for employers in the state of Victoria who were previously not bound by this award, but are now subject to the award by virtue of the award having been declared a common rule award under s.141 of the *Workplace Relations Act 1996*.

19A.2 These transitional rates of pay and allowances shall not apply after the beginning of the first pay period commencing on or after 1 August 2005.

19A.3 Wage rates (clause 19.1)

Grade and title	Award rate per week
	\$
Grade 1 Legal Clerical Assistant	484.10
Grade 2 Legal Clerical Assistant	527.50
Grade 3 Legal Clerical Officer	561.20
Grade 4 Legal Clerical Officer/Articled Clerk	602.90
Grade 5 Legal Clerical and Administrative Officer	663.90
Grade 6 Legal Law Clerk/Solicitor	705.20
Grade 7 Legal Administrative and Professional Officer	
Grade 7A 2nd Year of Service	767.80
Grade 7B 3 rd Year of Service	805.50

19A.4 Juniors (clause 23.8)

19A.4.1 Grade 1 legal clerical assistant

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	217.85
At 16 years of age	50	242.05
At 17 years of age	60	290.45
At 18 years of age	70	338.90
At 19 years of age	80	387.30
At 20 years of age	90	435.70

19A.4.2 Grade 2 legal clerical assistant

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	237.40
At 16 years of age	50	263.75
At 17 years of age	60	316.50
At 18 years of age	70	369.25
At 19 years of age	80	422.00
At 20 years of age	90	474.75

19A.4.3 Grade 3 legal clerical officer

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	252.55
At 16 years of age	50	280.60
At 17 years of age	60	336.70
At 18 years of age	70	392.85
At 19 years of age	80	448.95
At 20 years of age	90	505.10

19A.4.4 Grade 4 clerical officer/articled clerk

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	271.30
At 16 years of age	50	301.45
At 17 years of age	60	361.75
At 18 years of age	70	422.05
At 19 years of age	80	482.30
At 20 years of age	90	542.60

19A.4.5 Grade 5 legal clerical and administrative officer

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	298.75
At 16 years of age	50	331.95
At 17 years of age	60	398.35
At 18 years of age	70	464.70
At 19 years of age	80	531.10
At 20 years of age	90	597.50

19A.4.6 Grade 6 law clerk/solicitor

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	317.35
At 16 years of age	50	352.60
At 17 years of age	60	423.10
At 18 years of age	70	493.65
At 19 years of age	80	564.15
At 20 years of age	90	634.70

19A.4 Supported Wage (clause 19.2)

19A.4.1 Provided that the minimum amount payable must not be less than \$60 per week.

19A.4.1 The minimum amount payable to the employee during the trial period must be no less than \$60 per week.

19A.5 Amount of federal adult minimum wage (clause 21.2)

19A.5.1 The federal minimum wage for full-time adult employees not covered by 21.4 [special categories clause], is \$467.40 per week.

19A.6 Meal allowance (clause 22.1)

19A.6.1 An employee shall be supplied with an adequate meal where an employer has his or her own cooking and dining facilities or be paid meal money in addition to any overtime payment as follows:

19A.6.1(a) When required to work not less than one hour of overtime (Monday to Friday inclusive) and such overtime finishes one and a half hours after the normal finishing time or five hours after the preceding meal break, whichever first occurs, or in the case of a shift worker when the overtime work on any shift exceeds one hour - \$10.20. Provided that where such overtime work exceeds four hours a further meal allowance of \$8.10 shall be paid.

19A.6.1(b) When required to work more than five hours overtime on a Saturday or a Sunday, or more than five hours by a shift worker on his/her rostered day off - \$10.20 and a further \$8.10 when required to work more than nine hours on such day. The provisions of this clause shall not apply where an employee could reasonably return home for a meal within the period allowed.

19A.6.1(c) On request meal money shall be paid on the same day as overtime is worked.

19A.7 Uniform allowance (clause 22.2)

Where an employer requires an employee to wear any uniform, dress or clothing, such employee shall be paid an allowance of \$3.20 per week unless such uniform, dress, or

clothing is supplied and laundered by the employer.

19A.8 Vehicle allowance (clause 22.4)

19A.8.1 Where an employer requires an employee to use an employees own motor vehicle in the performance of the employees duties such employee shall be paid an allowance of 32 cents per kilometre for a motor cycle and 52 cents per kilometre for a motor vehicle on any day when the employee is so required to use his vehicle.

19A.8.2 Where an employee is required as a condition of employment to provide themselves with a motor vehicle, which is used in the performance of the employees duties, all expenses including registration, running and maintenance of such motor vehicle shall be paid by the employer.

20. ARBITRATED SAFETY NET ADJUSTMENT

20.1 Arbitrated safety net adjustment

[20.1 substituted by [PR948301](#); [PR959921](#) ppc 06Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by [PR956287](#))]

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.

20.2 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.

21. FEDERAL MINIMUM WAGE

21.1 The federal minimum wage

No employee shall be paid less than the federal minimum wage.

21.2 Amount of federal adult minimum wage

[21.5.3 varied by [PR948301](#); [PR959921](#) ppc 06Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by [PR956287](#))]

21.2.1 The federal minimum wage for full-time adult employees not covered by 21.4 [special categories clause], is \$484.40 per week.

21.2.2 Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be

paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in 21.2.1.

- 21.2.3** Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in 21.2.1 according to the number of hours worked.

21.3 How the federal minimum wage applies to juniors

- 21.3.1** The wage rates provided for juniors by this award continue to apply unless the amount determined under 21.3.2 is greater.

- 21.3.2** The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in 21.2.

21.4 Application of minimum wage to special categories of employee

- 21.4.1** Due to the existing applicable award wage rates being greater than the relevant proportionate federal minimum wage, this clause has no application to employees undertaking a National Training Wage Traineeship, an Australian Traineeship, a Career Start Traineeship, a Jobskills placement or an apprenticeship.

- 21.4.2** [Leave reserved for other special categories]

21.5 Application of federal minimum wage to award rates calculation

The federal minimum wage:

- 21.5.1** applies to all work in ordinary hours;
- 21.5.2** applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and

[21.5.3 substituted by [PR948301](#); [PR959921](#) ppc 06Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by [PR956287](#))]

- 21.5.3.** is inclusive of the arbitrated safety net adjustment provided by the *Safety Net Review - Wages June 2005* decision [[PR002005](#)] and all previous safety net and national wage adjustments.

22. ALLOWANCES

22.1 Meal allowance

[22.1 see also Common Rule Declaration [PR956287](#) appended to this award]

An employee shall be supplied with an adequate meal where an employer has his or her own cooking and dining facilities or be paid meal money in addition to any overtime payment as follows:

[22.1.1 varied by [PR948301](#) [PR959921](#) [PR975058](#) [PR979413](#); [PR983638](#) ppc 01Oct08]

22.1.1 When required to work not less than one hour of overtime (Monday to Friday inclusive) and such overtime finishes one and a half hours after the normal finishing time or five hours after the preceding meal break, whichever first occurs, or in the case of a shift worker when the overtime work on any shift exceeds one hour - \$12.00. Provided that where such overtime work exceeds four hours a further meal allowance of \$9.55 shall be paid.

[22.1.2 varied by [PR948301](#) [PR959921](#) [PR975058](#) [PR979413](#); [PR983638](#) ppc 01Oct08]

22.1.2 When required to work more than five hours overtime on a Saturday or a Sunday, or more than five hours by a shift worker on his/her rostered day off - \$12.00 and a further \$9.55 when required to work more than nine hours on such day. The provisions of this clause shall not apply where an employee could reasonably return home for a meal within the period allowed.

22.1.3 On request meal money shall be paid on the same day as overtime is worked.

22.2 Uniform allowance

[22.2 varied by [PR948301](#) [PR959921](#) [PR975058](#) [PR979413](#)]

Where an employer requires an employee to wear any special uniform, dress or clothing, such employee shall be paid an allowance of \$3.65 per week unless such uniform, dress, or clothing is supplied and laundered by the employer.

22.3 Protective clothing

The employer will reimburse employees engaged in work damaging to clothing (for example, the use, maintenance or running repairs of office machines or in the receiving and/or the despatch of goods) an amount equal to the costs of uniforms and/or protective clothing, except where uniforms and/or protective clothing are provided free of charge by the employer.

22.4 Vehicle allowance

[22.4 varied by [PR959921](#); [PR975058](#) ppc 01Dec06]

22.4.1 Where an employer requires an employee to use an employees own motor vehicle in the performance of the employees duties such employee shall be paid an allowance of 36 cents per kilometre for a motor cycle and 60 cents per kilometre for a motor vehicle on any day when the employee is so required to use his vehicle.

22.4.2 Where an employee is required as a condition of employment to provide themselves with

a motor vehicle, which is used in the performance of the employees duties, all expenses including registration, running and maintenance of such motor vehicle shall be paid by the employer.

22.5 Living away from home allowance

22.5.1 An employee, required by the employer to work temporarily for the employer away from the employee's usual place of employment, and who is required thereby to sleep away from the employee's usual place of residence, shall be entitled to the following:

22.5.1(a) The payment of an allowance to cover all fares to and from the place at which the employer requires the employee to work.

22.5.1(b) The payment of an allowance to cover all reasonable expenses incurred for board and lodging.

22.5.2 The allowances referred to in 22.5.1(a) and 22.5.1(b) shall not be paid where the fares and the board and lodging are provided by the employer.

22.5.3 In addition to the above, the employee shall receive payment at ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location, such paid time not to exceed eight hours in 24 hours.

22.6 Bank deposits and withdrawals

Unless an escort or a taxi is provided by the employer then the employer will pay an allowance which will either provide for an escort or the payment of a taxi fare. This provision will only apply where an employee is required to attend a banking institution for the purpose of depositing or withdrawing cash in excess of \$300.00.

23. CLASSIFICATIONS

23.1 Grade 1 legal clerical assistant

23.1.1 General

23.1.1(a) Work is under direct supervision with regular checking, but may take the form of less direct guidance and some autonomy where working in teams is required.

23.1.1(b) Competency at this level involves the application of knowledge and skill to a limited range of tasks and roles. There is a specified range of contexts where the choice of actions required is clear.

23.1.1(c) Competencies are used within established routines, methods and procedures that are predictable and within which judgement against established criteria is involved.

23.1.1(d) Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.

23.1.1(e) An indicative training and vocational educational level for this grade is Certificate/ Year 10 standard.

23.1.2 Generic skills

23.1.2(a) Problem solving

Identify and resolve problems by being able to:

identify routine problems;
identify and assess options;
implement solution.

23.1.2(b) Literacy

Read and write in the workplace by being able to:

write routine texts;
read routine text.

23.1.2(c) Numeracy

Use numbers in the workplace by being able to:

operate with numbers to complete routine tasks;
calculate numerical and related information to perform routine tasks;
interpret and present numerical and related information to complete routine tasks.

23.1.3 Core skills

23.1.3(a) Information handling

23.1.3(a)(i) Handle mail to facilitate communication by being able to:

receive and distribute incoming mail;
receive and dispatch outgoing mail;
collate and dispatch documents for bulk mailing.

23.1.3(a)(ii) To handle information to maintain access to and security of records by being able to:

file documents;
identify and retrieve documents.

23.1.3(b) Communication

To process information to facilitate communication flow by being able to:

receive and relay oral messages;
receive and relay written messages.

23.1.3(c) Enterprise/industry

To apply knowledge of enterprise to complete routine administrative tasks, by being able to:

identify key functions and personnel/departments;
apply office procedures.

23.1.3(d) Technology

23.1.3(d)(i) To operate a range of office equipment to complete routine tasks by being able to:

select equipment to be used for task(s);
locate equipment to be used for task(s);
operate equipment.

23.1.3(d)(ii) To access and retrieve computer data using keyboard skills by being able to:
open file;
retrieve data;
close file;
shut down equipment.

23.1.3(e) Organisational

To follow established work schedules to achieve designated group/section goals by being able to:

plan and organise personal daily work routine.

23.1.3(f) Team

To participate in a team to achieve designated tasks by being able to:

complete allocated tasks.

23.1.3(g) Business/financial

To record and prepare financial documentation for cash flow and accounting records by being able to:

record petty cash transactions;
prepare banking documents;
prepare business source documents.

23.1.3(h) Legal skills

Not applicable at this level.

23.2 Grade 2 legal clerical assistant

23.2.1 General

23.2.1(a) Work is under routine supervision with intermittent checking, but may take the form of general guidance and considerable autonomy where working in teams is required. Responsibility for some roles and coordination within a team may be required.

23.2.1(b) Competency at this level involves the application of knowledge and skills to a range of tasks and roles. There is a defined range of contexts where the choice of actions required is usually clear, with limited complexity in the choice.

23.2.1(c) Competencies are used within established routines, methods and procedures, in some cases involving discretion and judgement about possible actions.

23.2.1(d) Employees will be graded at the level where the principal functions of their employment, as determined by the employer, requires the exercise of skills at the level set out in the respective grade.

23.2.1(e) An indicative training and vocational educational level for this grade is Certificate/ Year 11 standard.

23.2.2 Generic skills

As per grade 1 (23.1.2 or 23.1.3).

23.2.3 Core skills

23.2.3(a) Information handling

Process information to provide access to current records, by being able to:

update and modify existing organisational records;
remove inactive and dead files.

23.2.3(b) Communication

Process and respond to information to facilitate communication flow by being able to:

respond to incoming telephone calls;
make telephone calls;
draft simple correspondence.

23.2.3(c) Enterprise/industry

23.2.3(c)(i) Respond to and act upon internal/external enquiries to promote the products and services of the organisation by being able to:

provide information from own function area;
re-direct enquiries;
follow up action is taken where required.

23.2.3(c)(ii) Receive visitors to ensure a positive image of the organisation is presented by being able to:

greet visitors;
attend to visitors needs.

23.2.3(d) Technology

23.2.3(d)(i) Operate a range of office equipment to complete non-routine tasks by being able to:

operate equipment;
identify and/or rectify minor faults.

23.2.3(d)(ii) Edit computer data using keyboard skills by being able to:

open file;
edit information;
save and exit;
shut down equipment.

23.2.3(d)(iii) Produce simple documents using keyboard skills by being able to:

document from written text using standard format.

23.2.3(e) Organisation

Establish own work schedule to achieve designated group/section goals by being able to organise own work schedule.

23.2.3(f) Team

Participate in allocation and completion of team tasks by being able to:

participate in identifying tasks for team;
complete own tasks;
assist others to complete (team) tasks.

23.2.3(g) Business/financial

Process financial documentation for cash flow and accounting records by being able to:

- reconcile invoices for payment to creditors;
- prepare statements for debtors;
- enter payment summaries into journals;
- post journals to ledger.

23.2.3(h) Legal

Not applicable at this level.

23.3 Grade 3 legal clerical officer

23.3.1 General

23.3.1(a) Work is under limited supervision with checking related to overall progress, but may take the form of broad guidance and autonomy where working in teams is required. Responsibility for the work of others may be involved, and team coordination may be required.

23.3.1(b) Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills. There is a range of tasks and roles in a variety of contexts, with some complexity in the extent and choice of actions required. Competencies are used within routines, methods and procedures where some discretion and judgement is required in selection of equipment, work organisation, services, actions and achieving outcomes within time constraints.

23.3.1(c) Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.

23.3.1(d) An indicative training and educational level for this grade is the Trade Certificate or equivalent TAFE/Higher School Certificate/Victorian Certificate of Education.

23.3.2 Generic skills

As per grades 1 and 2, together with the following:

23.3.2(a) Problem solving

Identify, clarify and resolve problems by being able to:

- identify non-routine problems;
- clarify nature of the problem;
- investigate options and decide on the appropriate course of action;
- implement solution;
- evaluate and report on effectiveness of solutions and related outcomes;

assist others to identify and resolve problems in the workplace;
report on effectiveness of solutions and related outcomes.

23.3.2(b) Literacy

23.3.2(b)(i) Write in the workplace, by being able to:

write non-routine texts.

23.3.2(b)(ii) Read in the workplace by being able to:

read non-routine texts.

23.3.2(c) Numeracy

Use numbers in the workplace by being able to:

operate with numbers to complete non-routine tasks;
calculate numerical and related information to perform non-routine tasks;
interpret and present numerical and related information to complete non-routine tasks.

23.3.3 Core skills

23.3.3(a) Information handling

Maintain information records system to ensure integrity of system by being able to:

assemble new files;
identify and process inactive and dead files;
record documentation movements.

23.3.3(b) Communication

23.3.3(b)(i) Collect and provide information to facilitate communication flow by being able to:

respond to telephone, oral and written requests for information;
draft routine correspondence in response to a need or request.

23.3.3(b)(ii) Transcribe oral instructions by writing shorthand notes for the production of a text by being able to:

take dictation.

23.3.3(c) Enterprise/industry

23.3.3(c)(i) Provide information and advice to promote the products/services of the organisation by being able to:

clarify specific needs of a client;
provide information and advice;
follow up.

23.3.3(c)(ii) Process client complaints to ensure the goals of the organisation are met by being able to:

clarify the nature of the complaint;
identify options for resolution;
act to resolve complaint.

23.3.3(d) Technology

23.3.3(d)(i) Coordinate the use of a range of office equipment to complete complex tasks by being able to:

operate equipment;
maintain equipment.

23.3.3(d)(ii) Organise the copying, collating and binding of documents by being able to:

select appropriate media;
copy and collate documents;
distribute documents.

23.3.3(d)(iii) produce complex documents using keyboard skills by being able to:

establish document structure;
produce documents;
shut down equipment.

23.3.3(e) Organisational

Organise schedules to achieve agreed group/section goals by being able to:

coordinate own work routine with others;
make and record appointments on behalf of another;
make travel and accommodation bookings in line with given itinerary.

23.3.3(f) Team

Negotiate with team members to allocate and complete tasks to achieve group goals by being able to:

clarify tasks to achieve group goals;
negotiate allocation of tasks;
monitor completion of allocated tasks.

23.3.3(g) Business/financial

23.3.3(g)(i) Monitor records of income and expenditure for budgetary records by being able to:

reconcile accounts to balance;
prepare bank reconciliations.

23.3.3(g)(ii) Monitor cash control accounting purposes by being able to:

document and lodge takings at bank;
receive and document payments/takings;
dispatch statements to debtors;
follow up and record outstanding accounts;
dispatch payments to creditors.

23.3.3(g)(iii) Monitor stock levels for control purposes by being able to:

maintain stock control records.

23.3.3(h) Legal

An understanding of the basic structures of the Victorian legal system by being able to locate the major legal institutions and process standard legal procedures:

operate within the information channels and procedures of the institutions;
exhibit a basic understanding of areas of law for the purposes of information flow and referral.

23.4 Grade 4 legal clerical officer/articled clerk

23.4.1 General

23.4.1(a) Work is without supervision, with general guidance on progress and outcomes sought as required. The work of others may be supervised or teams guided or facilitated. Responsibility for and limited organisation of the work of others may be involved.

23.4.1(b) Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks and roles in a variety of contexts, with complexity in the range and choice of actions required.

23.4.1(c) Competencies are used within routines, methods and procedures where discretion and judgement is required, for both self and others, in planning and selection of equipment, work organisation, services, actions and achieving outcomes within time constraints.

23.4.1(d) Employees will be graded at the level where the principal functions of their

employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.

- 23.4.1(e)** An indicative training and vocational educational level for this grade is TAFE Advanced Certificate or in the case of articulated clerks only the obtainment of either a Bachelor of Law and/or Bachelor of Jurisprudence.

23.4.2 Generic skills

As per grades 1, 2 and 3 together with the following:

23.4.2(a) Problem solving

Identify, clarify and resolve problems by being able to:

- identify problem(s);
- clarify the nature of the problem;
- determine criteria for optimal solution;
- implement solution;
- evaluate and report on effectiveness of solution and related outcomes;
- assist others to identify, clarify and resolve problems in the workplace.

23.4.2(b) Literacy

23.4.2(b)(i) Write in the workplace by being able to:

compose routine and non-routine texts.

23.4.2(b)(ii) Read in the workplace by being able to:

read and analyse routine and non-routine texts.

23.4.2(c) Numeracy

Use numbers in the workplace by being able to:

- operate with numbers to establish procedures;
- calculate numerical and related information to establish procedures;
- interpret and present numerical and related information to establish procedures.

23.4.3 Core skills

23.4.3(a) Information handling

Manage an established records management system to ensure integrity of the system by being able to:

- maintain existing filing arrangements;
- ensure distribution of files and records;

maintain security of filing system;
train staff.

23.4.3(b) Communication

23.4.3(b)(i) Organise and provide information to facilitate communication flow by being able to:

receive and process a request for information;
identify information source(s);
compose report/correspondence.

23.4.3(b)(ii) Transcribe oral instructions by writing shorthand notes for the production of a text by being able to:

take dictation.

23.4.3(c) Enterprise/industry

Provide advice in order to meet current and anticipated client requirement by being able to:

identify current client requirements;
provide information on current service provision and resource allocation within area of responsibility;
identify trends in client requirements.

23.4.3(d) Technology

23.4.3(d)(i) Produce complex documents, reports and work sheets using keyboard skills by being able to:

determine presentation and format documentation;
produce document;
shut down equipment.

23.4.3(d)(ii) Operate computer equipment to maintain storage media and filing system by being able to:

maintain storage media;
maintain filing system;
shut down equipment;
train others in the use of office equipment.

23.4.3(d)(iii) Operate and maintain computer printer by being able to:

set printer for document requirements;
maintain printer.

23.4.3(e) Organisational

23.4.3(e)(i) Manage appointments diary on behalf of another/others to achieve identified goals by being able to:

manage diary on behalf of another/others;
assist with appointment preparation and follow up.

23.4.3(e)(ii) Plan business trip and associated itinerary for management/executive to ensure effective use of time management principles by being able to:

organise business itinerary;
identify credit facilities.

23.4.3(e)(iii) Plan meetings to enable the stated objectives of the meeting to be met by being able to:

prepare documentation for meetings;
make meeting arrangements;
record minutes of meetings.

23.4.3(f) Team

Manage the team to ensure team goals are achieved by being able to:

plan work for team;
allocate tasks to members of the team;
monitor team performance;
provide training for team members.

23.4.3(g) Business/financial

Produce end of period reports for cash flow projections and budgetary records by being able to:

prepare financial reports;
undertake and document costing procedures;
draft financial forecasts/budgets.

23.4.3(h) Legal skills

An understanding and appreciation of the structures of the Victorian legal system by being able to:

acquire and apply a limited knowledge of professional legal functions under direct supervision as a clerk by being able to interview clients, draft (for checking) documents and instructing on standard legal matters;

exhibit a basic understanding of different areas of law as they are dealt with,

within the firm or between firms or between the firm and legal institutions for means of referral.

23.5 Grade 5 legal clerical and administrative officer

23.5.1 General

- 23.5.1(a)** Work is under broad guidance. The work of others may be supervised or teams guided. Responsibility for the planning and management of the work of others may be involved.
- 23.5.1(b)** Competency at this level involves the self-directed application of knowledge with substantial depth in some areas and a range of technical and other skills to tasks, roles and functions in both varied and highly specific contexts.
- 23.5.1(c)** Competencies are normally used independently and both routinely and non-routinely. Judgement is required in planning and selecting appropriate equipment, services, techniques and work organisation for self and others.
- 23.5.1(d)** Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.
- 23.5.1(e)** An indicative training and vocational education level for this grade is part achievement of Associate Diploma at TAFE or Tertiary level (or equivalent).

23.5.2 Generic skills

As per grades 1, 2, 3 and 4.

23.5.3 Core skills

23.5.3(a) Information handling

23.5.3(a)(i) Establish a records system to ensure integrity of system by being able to:

- determine the needs of the organisation;
- select appropriate system;
- implement new/improved system;
- provide staff training.

23.5.3(a)(ii) Establish and maintain library resource collection by being able to:

- store publications;
- update incoming publications;
- circulate publications.

23.5.3(b) Communication

Initiate research and prepare information to facilitate communication flow by being able to:

need for documents identified;
need for research identified;
obtain date;
drafts prepared;
produce report.

23.5.3(c) Enterprise/industry

Provide advice on response to the changing environment in order to achieve organisational goals by being able to:

analyse changes to the internal/external environment which impact on the role of the department or enterprise;
assist with the development of options for future strategies;
assist with planning to match future requirements.

23.5.3(d) Technology

23.5.3(d)(i) Manage the design and development of documents, reports and work sheets by being able to:

identify document requirements;
design document format.

23.5.3(d)(ii) Establish, maintain and supervise a small network by being able to:

establish a small network;
maintain a small network;
assist network users;
shut down network equipment;
train network users.

23.5.3(e) Organisational

23.5.3(e)(i) Plan and manage meeting to achieve identified group/section goals by being able to:

organise meetings;
conduct meetings on behalf of management.

23.5.3(e)(ii) Plan and manage conferences on behalf of management to achieve identified goals by being able to:

plan conference;
organise conference;
promote conference;

coordinate conference proceedings.

23.5.3(f) Team

23.5.3(f)(i) Manage the team to ensure team achievements reflect identified enterprise objectives by being able to:

clarify the link between goals of the team and goals of the enterprise;
plan and allocate work for the team;
monitor team performance;
evaluate achievements of team;
organise training for team.

23.5.3(f)(ii) Participate in staff selection to ensure team goals are achieved by being able to:

identify requirements for new team position;
draft job vacancy advertisement;
select staff;
employ staff.

23.5.3(g) Business/financial

Manage payroll records for employee salaries and statutory record keeping purposes by being able to:

prepare payroll data;
process, payment of wages and salaries;
administer PAYE salary records.

23.5.3(h) Legal skill

Acquire and apply a working knowledge of the structures and methods of the Victorian Legal System by being able to:

understand and participate in, under supervision, the processes of major legal institutions;
display an understanding of areas of law and legal procedures for resolving matters referred to the employee, subject to general and procedural supervision;
initiate routine legal procedures and documentation.

23.6 Grade 6 law clerk/solicitor

23.6.1 General

23.6.1(a) Work is under limited guidance in line with a broad plan, budget or strategy. Responsibility and defined accountability for the management and output of the work of others and for a defined function or functions may be involved.

- 23.6.1(b)** Competency at this level involves the self-directed development of knowledge with substantial depth across a number of areas and/or mastery of a specified area with a range of skills. Application is to major functions in either varied or highly specific contexts.
- 23.6.1(c)** Competencies are normally used independently and are substantially non-routine. Significant judgement is required in planning, design, technical or supervisory functions related to products, services, operations or processes of the firm.
- 23.6.1(d)** Specific clerical and administrative competencies do not automatically apply at this level or above. Legal competencies continue to apply in at least conjunction with the clerical and administrative competencies.
- 23.6.1(e)** Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.
- 23.6.1(f)** An indicative training and vocational educational level for this grade is Associate Diploma at TAFE or Tertiary level (or equivalent).

23.6.2 Core skills

- 23.6.2(a)** Legal skills - display a practical understanding and application of the structures, methods and procedures of the Victorian Legal System by being able to:
- initiate proceedings and procedures, upon referral or under direction, in the legal institutions of the state on behalf of the firm or clients;
 - provide routine advice to clients on legal matters and procedures;
 - provide routine assistance and instruction in legal proceedings.
- 23.6.2(b)** Or by being able to:
- establish proof of admission to practice as a barrister and solicitor of the Supreme Court of Victoria in the first year of service post admission.

23.7 Grade 7 legal administrative and professional officer

23.7.1 General

- 23.7.1(a)** Work is in accordance with a broad plan, budget or strategy. Responsibility and broad ranging accountability for the structure, management and output of the work of others and/or functions may be involved.
- 23.7.1(b)** Competency at this level involves the self-directed development and mastery of broad and/or specialised areas of knowledge with a range of skills. Application is to major, broad or specialised functions in highly varied and/or highly specialised contexts.

- 23.7.1(c) Competencies are normally used independently and are non-routine. Significant high level judgement is required in planning, design, operational, technical and/or management functions.
- 23.7.1(d) Specific clerical and administrative competencies do not automatically apply at this level. Legal competencies continue to apply in at least conjunction with the clerical and administrative competencies.
- 23.7.1(e) An employee graded at this level shall be able to achieve at least one area of the Legal Core Skills.
- 23.7.1(f) An indicative training and vocational educational level for this grade is Diploma/ Degree at TAFE or Tertiary level (or equivalent) with the exception of articulated clerk.

23.7.2 Core skills

23.7.2(a) Legal skills

Display and exercise a working knowledge of the structures/procedures/ rules of the Victorian Legal System by being able to:

establish proof of being able to practice as a Barrister and Solicitor in the Supreme Court of Victoria, with little or no experience (other than as an articulated clerk);

display and exercise an extensive knowledge of and understanding of different procedures and areas of law;

provide advice on legal matters to clients; instruct in Court proceedings, initiate and follow up on all areas of legal documentation;

exhibit and apply an unsupervised ability of understanding and operating within and responding to complex legal procedures and areas of change in law, regulations and rules.

23.8 Juniors

23.8.1 Junior employees (under the age of 21 years of age shall be graded in the manner set out in this clause according to the acquisition and use of skills.

[23.8.2 substituted by [PR948301](#); [PR959921](#) ppc 06Jul05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by [PR956287](#))]

23.8.2 Junior wages shall be the award rate of pay as follows per week:

23.8.2(a) Grade 1 legal clerical assistant

Age	% of adult wage	Award rate \$ per week
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Under 16 years	45	225.50
At 16 years of age	50	250.55
At 17 years of age	60	300.65
At 18 years of age	70	350.80
At 19 years of age	80	400.90
At 20 years of age	90	451.00

23.8.2(b) Grade 2 legal clerical assistant

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	240.05
At 16 years of age	50	272.25
At 17 years of age	60	326.70
At 18 years of age	70	381.15
At 19 years of age	80	435.60
At 20 years of age	90	490.05

23.8.2(c) Grade 3 legal clerical officer

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	260.20
At 16 years of age	50	289.10
At 17 years of age	60	346.90
At 18 years of age	70	404.75
At 19 years of age	80	462.55
At 20 years of age	90	520.40

23.8.2(d) Grade 4 legal clerical officer/articled clerk

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	278.95
At 16 years of age	50	309.95
At 17 years of age	60	371.95
At 18 years of age	70	433.95
At 19 years of age	80	495.90
At 20 years of age	90	557.90

23.8.2(e) Grade 5 legal clerical and administrative officer

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	306.40
At 16 years of age	50	340.45
At 17 years of age	60	408.55
At 18 years of age	70	476.65
At 19 years of age	80	544.70
At 20 years of age	90	612.80

23.8.2(f) Grade 6 law clerk/solicitor

Age	% of adult wage	Award rate \$ per week
Under 16 years	45	325.00
At 16 years of age	50	361.10
At 17 years of age	60	433.30
At 18 years of age	70	505.55
At 19 years of age	80	577.75
At 20 years of age	90	650.00

23.9 Advising employees of grading

23.9.1 All employees covered by this award shall be graded according to the grading structure set out in this clause. An employer will advise employees in writing of their grading and of any change to their grading

23.9.2 The grading by the employer shall be according to the skill level/levels or equivalents obtained by the employee or recognised to be exercised by the employer in order to carry out the principle functions of the employment.

23.10 Employees disputing grading

23.10.1 An employee wishing to dispute any grading shall do so by providing written notice to the employer of the reasons for the dispute.

23.10.2 Upon receiving written notice of a disputed grading, the employer shall review the grading within a reasonable time and no later than one week from being advised by the employee. The employer shall advise the employee of the result of this review in a formal written response.

23.10.3 If the disputed grading cannot be resolved by the employer and the employee in a reasonable time, the dispute will be dealt with pursuant to the settlement of disputes clause of this award.

24. SPECIAL CONDITIONS OF EMPLOYMENT - ARTICLED CLERKS, LAW

STUDENTS AND WORK EXPERIENCE CLERKS

24.1 Articled clerks

An articled clerk or law student shall after application to their employer be allowed leave of absence with pay for the following purposes:

- 24.1.1** For study and attendance at examinations, not exceeding four days in respect of each subject for which he presents himself for examination in accordance with the Legal Education Rules.
- 24.1.2** To attend lectures and organised classes at a university or other institution as part of a course of instruction as conducted pursuant to the Legal Education Rules, which are necessary to enable the employee to qualify for admission as a barrister and solicitor.
- 24.1.3** Subject to the unconditional consent of his employer, to attend a full-time course of practical training approved by the Council of Legal Education provided that where the duration of such course exceeds three weeks the employer shall be entitled to grant such leave without pay.

24.2 Law students and work experience clerks

- 24.2.1** All law students and work experience clerks ready and available for work and performing all duties prescribed by the employer shall be paid the full weekly wage fixed herein irrespective of the number of hours worked.
- 24.2.2** To terminate employment at least one week's notice shall be given by either employer or the employee or in lieu of such notice one week's wages shall be paid or forfeited as the case may be provided always that the provisions of this subclause shall not apply in any instance where an employee is dismissed for conduct justifying summary dismissal including malingering, inefficiency or neglect of duty and in such cases the wages shall be paid up to the time of dismissal only.

24.3 Annual leave

In the case of articled clerks or law students absence for the purposes of study and attendance at examinations not exceeding four days in respect of each subject for which the articled clerk or law student presents for examination will be deemed to be part of a period of employment for the purposes of accrual of annual leave in accordance with clause 31 - Annual leave. Service will also be considered unbroken for annual leave purposes in the case of an articled clerk or law student for absences of any period for the purpose of study and instruction at any course approved by the Council of Legal Education pursuant to the Legal Education Rules.

25. 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](#)

25.1 The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, together with this award provision, as varied from time to time, governs the superannuation rights and obligations of the parties.

25.2 Ordinary time earnings for the purposes of this clause means:

25.2.1 the salary rate for the classification under this award;

25.2.2 any over-award payments;

25.2.3 loadings which the relevant employee earns for working normal rostered ordinary hours; and

25.2.4 casual loading in respect of casual employees.

25.3 Ordinary time earnings does not include bonuses, payment for overtime, any other extraordinary payment, remuneration or allowance, or any payment which is not calculated by reference to normal rostered ordinary hours.

25.4 Selection of fund

An employer shall make contributions or improvements pursuant to this clause in respect of an eligible employee to any of the following funds selected by an employer:

25.4.1 The Legal Industry Superannuation Scheme (LISS); or

25.4.2 An industry or multi-employer superannuation fund which has application to the employees in the business of the employer and which complies with Occupational Superannuation guidelines and has joint employer/union management.

26. STAND DOWN OF EMPLOYEES

An employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed for the following reasons:

a strike or stop-work meeting;

a breakdown of machinery;

rationing of power or the lack of fuel or transport;

any cause for which an employer cannot reasonably be held responsible, but excluding slackness of trade.

PART 6 - HOURS OF WORK AND RELATED MATTERS

27. HOURS OF WORK

27.1 Ordinary hours of work

- 27.1.1** Subject to 27.1.4, the ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days.
- 27.1.2** The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between an employer and the majority of employees concerned. Agreement in this respect may also be reached between an employer and an individual employee.
- 27.1.3** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 7.00 a.m. to 6.30 p.m. Monday to Friday. The spread of hours (i.e. 7.00 a.m. to 6.30 p.m.) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or in appropriate circumstances, between an employer and an individual employee.
- 27.1.4** Any work performed outside the spread of hours is to be paid for at overtime rates. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the workplace in a state of readiness for other employees to start work is to be regarded as part of the 38 ordinary hours of work.
- 27.1.5** Where agreement is reached in accordance with 27.1.2 the minimum rate to be paid for a day worker for ordinary time worked between midnight on Friday and midnight on Saturday shall be time and a half.
- 27.1.6** Where agreement is reached in accordance with 27.1.2 the minimum rate to be paid for a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday shall be double time.

27.2 Ordinary hours of work - continuous shift workers

- 27.2.1** Continuous shift work means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of an employer.
- 27.2.2** Subject to 27.2.3 the ordinary hours of continuous shift workers are, at the discretion of the employer to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Continuous shift workers are entitled to a twelve minute meal break on each shift which shall be counted as time worked.
- 27.2.3** By agreement between an employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed twelve months.

27.2.4 Except at the regular changeover of shifts, an employee shall not be required to work more than one shift in each 24 hours.

27.3 Ordinary hours of work - non-continuous

27.3.1 Subject to 27.3.2, the ordinary hours of work for non-continuous shift workers are to be an average of 38 per week and must not exceed 152 hours in 28 consecutive days.

27.3.2 By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed twelve months.

27.3.3 The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer.

27.3.4 Except at changeover of shifts an employee will not be required to work more than one shift in each 24 hours.

27.4 Methods of arranging ordinary working hours

27.4.1 Subject to the employers right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in 27.1.3 and the employers right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours is to be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude an employer reaching agreement with individual employees about how their working hours are to be arranged.

27.4.2 Matters upon which agreement may be reached include:

27.4.2(a) how the hours are to be averaged within a work cycle established in accordance with 27.1.2 and 27.1.3;

27.4.2(b) the duration of the work cycle for day workers provided that such duration shall not exceed three months;

27.4.2(c) rosters which specify the starting and finishing times of working hours;

27.4.2(d) a period of notice of a rostered day off which is less than four weeks;

27.4.2(e) substitution of rostered days off;

27.4.2(f) accumulation of rostered days off;

27.4.2(g) arrangements which allow for flexibility in relation to the taking of rostered days off;

27.4.2(h) any arrangements of ordinary hours which exceed eight hours in any day.

27.4.3 By agreement between an employer and the majority of employees or part of the, twelve

hour days or shifts may be introduced subject to:

- 27.4.3(a) proper health monitoring procedures being introduced;
- 27.4.3(b) suitable roster arrangements being made;
- 27.4.3(c) proper supervision being provided;
- 27.4.3(d) adequate breaks being provided;
- 27.4.3(e) an adequate trial or review process being implemented through the consultative process in clause 11 - Dispute resolution procedure.

27.4.4 Where an employee works on a shift other than a rostered shift (as defined), he/she shall:

- 27.4.4(a) if employed on continuous work, be paid at the rate of double time; or
- 27.4.4(b) if employed on other shift work, at the rate of time and one half for the first three hours and double time thereafter.

27.4.5 The provisions of 27.4.4 do not apply when the time worked is:

- 27.4.5(a) by arrangement between the employees themselves;
- 27.4.5(b) for the purposes of effecting the customary rotation of shifts; or
- 27.4.5(c) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for the day in accordance with clause 26 - Stand down of employees.

27.5 Daylight saving

27.5.1 Where by reason of State legislation, summer time is prescribed as being in advance of the standard time in that State the length of any shift:

commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; and

commencing on or before the time prescribed by such legislation for the termination of a summer time period,

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed by the relevant State legislation.

27.5.2 In this subclause the expressions **standard time** and **summer time** shall bear the same meaning as are prescribed by the relevant State legislation.

27.6 Make-up time

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

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

27.7 Special provisions for shift workers

[27.7 see also Common Rule Declaration [PR956287](#) appended to this award]

27.7.1 Definitions

27.7.1(a) For the purposes of this award:

rostered shift means any shift of which the employee concerned has had at least 48 hours notice;

afternoon shift means any shift finishing after 6.00 p.m. and at or before midnight;

night shift means any shift finishing subsequent to midnight and at or before 8.00 a.m.

27.7.1(b) By agreement between an employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

27.7.2 Afternoon and night shift allowances

27.7.2(a) An employee whilst on afternoon or night shift shall be paid for such shift 15% more than his or her ordinary rate.

27.7.2(b) An employee who works on an afternoon or night shift which does not continue:

27.7.2(b)(i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day workplace (where no more than eight ordinary hours are worked on each shift); or

27.7.2(b)(ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with 27.1.2 or 27.1.3 or 27.2.2 or 27.2.3;

shall be paid for each shift 50% for the first three hours and 100% for the remaining hours, in addition to his or her ordinary rate.

27.7.2(c) An employee who:

27.7.2(c)(i) during a period of engagement on shift, works night shift only; or

27.7.2(c)(ii) remains on night shift for a longer period than four consecutive weeks;
or

27.7.2(c)(iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him or her at least one third of his or her working time off night shift in each shift cycle;

shall, during such engagement, period or cycle, be paid 30% more than his or her ordinary rate for all time worked during ordinary working hours on such night shift.

27.7.3 Rate for working on Saturday shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. This extra rate is in substitution for and not cumulative upon the shift premiums prescribed in 27.7.2.

27.7.4 Rate for working on Sunday and public holiday shifts

27.7.4(a) The rate at which continuous shift workers are to be paid for work on a rostered shift the major portion of which is performed on a Sunday or public holiday, is double time.

27.7.4(b) The rate at which shift workers on other than continuous work are to be paid for all time worked on a Sunday or public holiday is as follows:

27.7.4(b)(i) Sundays - at the rate of double time;

27.7.4(b)(ii) Public holidays - at the rate of double time and a half.

27.7.4(c) Where shifts commence between 11.00 p.m. and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday shall be regarded as time worked on the Sunday or public holiday.

27.7.4(d) Where shifts fall partly on a holiday, the shift which has the major portion falling on the public holiday shall be regarded as the holiday shift.

27.7.4(d)(i) By agreement between an employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the holiday shift in lieu of the above.

27.7.4(e) The extra rates in this subclause are in substitution for and not cumulative upon the shift premiums prescribed in 27.7.2.

28. ROSTER

28.1 Rosters, where they apply, will be set for each fortnight period. The roster may alter the times on which an employee works their ordinary hours.

28.2 An employer will give employees fourteen days notice of each fortnightly roster. However, in order to meet specific operational requirements, an employer may change rosters after consulting with the employee(s) concerned and giving them as much notice as possible.

29. OVERTIME AND CALL BACK

29.1 Payment for working overtime

29.1.1 Except as provided for in 29.1.1(c), 29.1.1(d), 29.1.8 and 29.1.9, for all work done outside ordinary hours on any day or shift the overtime rates of pay are time and a half for the first three hours and double time thereafter until the completion of the overtime work. For continuous shift workers the rate for working overtime is double time.

29.1.1(a) For the purposes of this clause **ordinary hours** means the hours worked in an enterprise, fixed in accordance with 27.1.

29.1.1(b) The hourly rate, when computing overtime, is to be determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.

29.1.1(c) An employee may elect, with the consent of an employer, to take time off in lieu of payment for overtime at a time or times agreed with an employer.

29.1.1(c)(i) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.

29.1.1(c)(ii) An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.

29.1.1(d) When not less than 7 hours 36 minutes notice has been given to an employer a relief shift worker that he or she will be absent from work and the shift worker whom that person should relieve is not relieved and is required to continue work on his or her rostered day off the unrelieved employee shall be paid double time.

29.1.1(e) In computing overtime each day's work shall stand alone.

29.1.2 Reasonable overtime

[29.1.2 substituted by [PR948301](#) ppc 14Jun04]

29.1.2(a) Subject to clause 29.1.2(b) an employer may require an employee to work reasonable overtime at overtime rates.

29.1.2(b) 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:

29.1.2(b)(i) any risk to employee health and safety;

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

29.1.2(b)(iii) the needs of the workplace or enterprise;

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

29.1.2(b)(v) any other relevant matter.

29.1.3 Rest period after overtime

29.1.3(a) When overtime work is necessary it must, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive working days.

29.1.3(b) An employee (other than a casual employee) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times must, subject to this subclause, be released after completion of the overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

29.1.3(c) If on the instructions of an employer an employee resumes or continues work without having had the ten consecutive hours off duty the employee must be paid at double rates until he or she is released from duty for such period. The employee is then entitled to be absent until he or she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

29.1.3(d) By agreement between an employer and individual employee, the ten hour break provided for in this clause may be reduced to a period no less than eight hours.

29.1.3(e) The provisions of this subclause will apply in the case of shift workers as if eight hours were substituted for ten hours when overtime is worked:

29.1.3(e)(i) for the purpose of changing shift rosters; or

29.1.3(e)(ii) where a shift worker does not report for duty and a day worker or a

shift worker is required to replace the shift worker; or

29.1.3(e)(iii) where a shift is worked by arrangement between the employees themselves.

29.1.4 Call back

An employee recalled to work overtime after leaving the employers enterprise (whether notified before or after leaving the enterprise) is to be paid for a minimum of four hours work at the rate of time and one half for the first three hours and double time thereafter (or double time for the full period for continuous shift workers). There are a number of conditions which apply to this provision:

- 29.1.4(a)** Where an employee is required to regularly hold himself or herself in readiness for a call back he or she will be paid for a minimum of three hours work at the appropriate overtime rate. This is subject to 29.1.5 which deals with the conditions for standing by.
- 29.1.4(b)** If the employee is recalled on more than one occasion between the termination of their ordinary work on one day and the commencement of their ordinary work on the next ordinary working day he or she shall be entitled to the three or four hour minimum overtime payment provided for in this subclause for each call back. However, in such circumstances, it is only the time which is actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.
- 29.1.4(c)** Except in the case of unforeseen circumstances arising, an employee will not be required to work the full three or four hours as the case may be if the job he or she was recalled to perform is completed within a shorter period.
- 29.1.4(d)** This subclause does not apply in cases where it is customary for an employee to return to the employers enterprise to perform a specific job outside the employee's ordinary working hours or where the overtime is continuous (subject to a meal break) with the commencement or completion of ordinary working time.
- 29.1.4(e)** Overtime worked in the circumstances specified in this subclause is not to be regarded as overtime for the purpose of 29.1.3, when the actual time worked is less than three hours on the call back or on each call back.

29.1.5 Standing by

Subject to any custom prevailing at the employer concerned, where an employee is required regularly to hold himself or herself in readiness to work after ordinary hours, the employee is to be paid standing by time at the employee's ordinary rate of pay for the time he or she is standing by.

29.1.6 Saturday work

A day worker required to work overtime on a Saturday shall be afforded at least four hours work or paid for four hours at the rate of time and one half for the first three hours

and double time thereafter, except where the overtime is continuous with overtime commenced on the previous day.

29.1.7 Sunday work

Employees required to work overtime on Sundays shall be paid for a minimum of three hours work at double time. The double time is to be paid until the employee is relieved from duty.

29.1.8 Public holiday work

Employees required to work overtime on public holidays shall be paid for a minimum of three hours work at double and a half time. The double and a half time is to be paid until the employee is relieved from duty.

29.1.9 Rest break

- 29.1.9(a)** An employee working overtime must be allowed a rest break of twenty minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- 29.1.9(b)** Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break will be paid at the employee's ordinary rate of pay.
- 29.1.9(c)** Where overtime is to be worked immediately after the completion of ordinary work on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of twenty minutes to be paid at ordinary rates.
- 29.1.9(d)** An employer and employee may agree to any variation of this subclause to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under this subclause.

30. MEAL BREAKS AND REST BREAKS

30.1 Meal breaks

An employee shall not be required to work for more than five hours without a break for a meal which shall be for a period of not less than 30 minutes and not more than 60 minutes.

30.1.1 Flexibility in relation to meal breaks

The following forms of flexibility may be implemented in respect of all employees of the employer or section/s thereof, subject to agreement between the employer and the majority of the employees concerned in the workplace or relevant section/s. Agreement in this respect may also be reached between an employer and an individual employee:

30.1.1(a) employees may work in excess of five hours but not more than six hours without a meal break.

30.1.1(b) meal breaks may be for a period of less than 30 minutes, but not less than twenty minutes.

30.1.2 Where an agreement is reached by the majority of employees it shall apply to all the employees in the workplace or section/s to which the agreement applies. This does not in any way restrict the application of an individual agreement.

30.1.3 An employee directed by an employer to work in excess of five hours without a meal (or such period as extended in accordance with 30.2) shall be paid at the rate of time and one half for the meal period and the employee shall be permitted to have the employee's usual meal period without deduction from the employee's wage as soon as possible after the prescribed meal period.

30.1.4 This clause shall not operate outside an employee's ordinary working hours. Meal breaks during overtime are prescribed in clause 29 - Overtime and call back.

30.2 Rest break

30.2.1 All employees shall be allowed two rest intervals on each day as follows:

30.2.1(a) the first of ten minutes to be allowed between the time of commencing work and the usual meal interval;

30.2.1(b) the second of ten minutes to be allowed between the usual meal interval and the time of ceasing work for the day.

30.2.2 All employees who work more than four hours on a Saturday morning shall be allowed a rest period of ten minutes between the times of commencing work and finishing work.

30.2.3 Such intervals are to be counted as part of time worked.

PART 7 - TYPES OF LEAVE

31. ANNUAL LEAVE

31.1 Accrual of leave

Full-time and part-time employees are entitled to 28 consecutive days annual leave including non-working days (i.e. four weeks) after each twelve months service (less the period of annual leave) with an employer.

31.2 Conversion of period of leave to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the entitlements hereof to an hourly entitlement for administrative ease (e.g. 152 hours rather than four weeks for an employee working a 38 hour week).

31.3 No payment in lieu

No payment shall be made by an employer or accepted by an employee, in lieu of the annual leave entitlement.

31.4 Additional leave for seven day shift workers

31.4.1 In addition to leave provided for in 31.1, seven day shift workers, that is shift workers who are rostered to work regularly on Sundays and holidays, shall be allowed seven consecutive days leave including non-working days.

31.4.2 Where an employee with twelve months continuous service is engaged for part of the twelve monthly period as a seven day shift worker, that employee is entitled to have the period of leave prescribed in 31.1 increased by half a day for each month he or she is continuously engaged as a seven day shift worker.

31.5 Taking of annual leave

31.5.1 Annual leave shall be taken in a manner that is agreed to between an employer and the employee. Leave can be broken up into any number of periods.

31.5.2 Where agreement cannot be reached pursuant to 31.5.1, the employer shall advise the employee of the date and amount of annual leave to be taken by giving the employee not less than four weeks notice of such requirement.

[31.5.3 varied by [PR968465](#) ppc 09Dec05]

31.5.3 The annual leave entitlement in 31.1 and 31.2 shall be given and taken within two years of becoming due. This period may be extended by agreement between an employer and employee.

31.5.4 Where an employer intends temporarily to close (or reduce to nulues) their establishment or a section thereof for the purposes inter alia of allowing annual leave to the employees concerned or a majority of them the employer may give in writing to such employees one months notice (or in the case of any employee engaged after giving of such notice, notice on the date of the employees engagement) that the employer elects to apply the provisions of this clause and thereupon:

31.5.4(a) Any such employee who at the date of closing is entitled to annual leave shall be given their annual leave commencing as on and from the date of closing and, in addition, shall be paid 1/12th of the ordinary rate of pay for the period of their employment after accrual of the employees right to the annual leave and up to but excluding the date of closing;

31.5.4(b) Any such employee who at the date of closing is not entitled to annual leave shall be given leave without pay as on and from the date of closing and shall be paid 1/12th of ordinary pay for the period of their employment since the commencement thereof or the accrual of the employees last annual leave (whichever is the later) and up to

but excluding the date of closing, together with pay for any holiday during such leave for which the employee is entitled to payment under this award; and

- 31.5.4(c)** The next twelve monthly qualifying period of employment for every such employee shall commence on and from the date of closing.

31.6 Public holidays falling in a period of leave

31.6.1 If any public holiday prescribed by this award falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there must be added to the period of annual leave, time equivalent to the ordinary time which the employee would have worked if the day had not been a holiday.

31.6.2 Where a holiday or holidays falls in a period of annual leave and the employee fails, without reasonable cause, to attend for work at the employee's ordinary starting time on the working day immediately following the last day of the period of annual leave, the employee shall not be entitled to be paid for the holiday or holidays.

31.7 Calculation of service

31.7.1 Employees shall not be eligible to accrue annual leave during any period of approved unpaid leave of absence exceeding one week except where such leave is in respect of unpaid sick leave.

31.7.2 In a twelve month period, up to 76 hours of unpaid sick leave shall be counted as time worked for the purposes of annual leave accruals.

31.7.3 Where a business is transmitted from one employer to another, as set out in this award, the period of continuous service that the employee had with the transmittor or any prior transmittor shall be deemed to be service with the transmittor and taken into account when calculating annual leave. However, an employee shall not be entitled to leave or payment in lieu for any period in respect of which leave has been taken or paid for.

31.8 Leave before due date

31.8.1 By agreement between an employer and the employee, annual leave may be taken in advance of the due date.

31.8.2 Where an employer granted annual leave in advance leaves or is discharged by an employer, the employer shall have the right to recover from any monies due to the employee, a sum equal to the annual leave granted in advance less any amounts subsequently accrued.

31.9 Payment for period of leave

[31.9.1 see also Common Rule Declaration [PR956287](#) appended to this award]

31.9.1 Each employee prior to commencing a period of annual leave shall be paid a sum equal to

the salary/wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave.

31.9.2 The wages to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of leave, including allowances, loadings and penalties paid for all purposes of the award and any other wages payable under the employee's contract of employment including any overaward payment.

31.9.3 The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

31.9.4 In addition to the payments specified in 31.9.1, employees shall be paid an annual leave loading of 17.5%.

Provided that where an employee would have received shift loadings, had the employee not been on leave during the relevant period and such loadings would have entitled the employee to a greater amount than the loading of 17.5%, then the employee shall be paid such greater amount in lieu of the 17.5% loading.

31.9.5 The annual leave loading is only payable on annual leave due. It is not payable on pro rata annual leave on termination.

31.10 Termination

31.10.1 Where a full-time or part-time employee with one or more weeks continuous service leaves the service of the employer for any reason other than serious and wilful misconduct, the employee shall be entitled to payment for pro rata annual leave at the rate of 2.923 ordinary hours pay for each 38 ordinary hours worked.

31.10.2 The calculation in 31.10.1 shall be made in accordance with the following:

31.10.2(a) For a full-time or part-time employee with less than twelve months continuous service:

from the date of commencement as a full-time or part-time employee to the date of termination.

31.10.2(b) For a full-time or part-time employee with more than twelve months continuous service:

from the date that annual leave last became due to the date of termination.

31.10.3 The terms of 31.8 shall apply in circumstances where an employee has been granted annual leave in advance of the due date.

32. PERSONAL LEAVE

[32 see also Common Rule Declaration [PR956287](#) appended to this award]

[32 substituted by [PR968465](#) 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 14.4.

32.1 Amount of paid personal leave

32.1.1 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.

32.1.2 The amount of personal leave to which an employee is entitled depends on how long they have worked for the employer and accrues as follows:

Length of time worked for employer	Personal leave (hours)
Less than 3 months	0
3 months to less than 12 months	3-1/3 hours for each completed month of service
Each year thereafter	10 days

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

32.1.3(a) 10 days less the total amount of personal leave taken during the year; or

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

32.2 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.

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

32.3.1 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.

32.3.2 By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in 32.3.1,

beyond the limit set out in 32.3.1. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

32.4 Employee must give notice

32.4.1 Before taking leave for personal illness or injury, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.

32.4.2 The notice must include:

32.4.2(a) the nature of the injury or illness (if known); and

32.4.2(b) how long the employee expects to be away from work.

32.4.3 If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

32.4.4 Before taking leave to care for members of their immediate family or household, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.

32.4.5 The notice must include:

32.4.5(a) the name of the person requiring care and support and his or her relationship to the employee;

32.4.5(b) the reasons for taking such leave; and

32.4.5(c) the estimated length of absence.

32.4.6 If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

32.5 Evidence supporting claim

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

32.5.2 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 the illness is such as to require care by another.

32.5.3 When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

32.6 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 employer 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 32.4 and 32.5 are met

32.7 Effect of workers' compensation

If an employee is receiving workers' compensation payments, they are not entitled to personal leave.

32A. BEREAVEMENT LEAVE

[32A inserted by [PR968465](#) 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 14.4.

32A.1 Paid leave entitlement

An employee is entitled to up to three days of bereavement leave on any occasion on which a member of the employee's immediate family or household dies.

32A.2 Unpaid leave entitlement

An employee may take unpaid bereavement leave by agreement with the employer. In the absence of agreement, the employee is entitled to take up to three days unpaid leave.

32A.3 Evidence supporting claim

An employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household.

33. PARENTAL LEAVE

[33 substituted by [PR968465](#) 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 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.

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).

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

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

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

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.

33.1 Definitions

33.1.1 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.

33.1.2 Subject to clause 33.1.3 hereof, in this clause, **spouse** includes a de facto or former spouse.

33.1.3 In relation to clause 33.7 hereof, **spouse** includes a de facto spouse but does not include a former spouse.

33.2 Basic entitlement

33.2.1 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.

33.2.2 Subject to 33.5.6, 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:

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

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

33.3 Variation of parental leave

Where an employee takes leave under clause 33.2.1 or 33.4.1(b), unless otherwise agreed 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 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 33.2 or the right to request in clause 33.4.

33.4 Right to request

33.4.1 An employee entitled to parental leave pursuant to the provisions of clause 33.2 may request the employer to allow the employee:

33.4.1(a) to extend the period of simultaneous unpaid parental leave provided for in clauses 30.2.2(a) and 30.2.2(b) up to a maximum of eight weeks;

33.4.1(b) to extend the period of unpaid parental leave provided for in clause 33.2.1 by a further continuous period of leave not exceeding 12 months;

33.4.1(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.

33.4.2 The employer 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 employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

33.4.3 Employee's request and employer's decision to be in writing

The employee's request and the employer's decision made under clauses 33.4.1(b) and 33.4.1(c) must be recorded in writing.

33.4.4 Request to return to work part-time

Where an employee wishes to make a request under clause 33.4.1(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.

33.5 Maternity leave

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

33.5.1(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;

33.5.1(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.

33.5.2 When the employee gives notice under 33.5.1(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.

33.5.3 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.

33.5.4 Subject to clause 33.2.1 hereof 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.

33.5.5 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 employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

33.5.6 Special maternity leave

33.5.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 33 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.

33.5.6(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.

33.5.6(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.

33.5.7 Where leave is granted under clause 33.5.4 hereof, 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.

33.6 Paternity leave

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

- 33.6.1(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
- 33.6.1(b)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- 33.6.1(c)** except in relation to leave taken simultaneously with the child's mother under clauses 33.2.2(a), 33.2.2(b) and 33.4.1(a), a statutory declaration stating:

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

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

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

33.6.2 The employee will not be in breach of clause 33.6.1 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.

33.7 Adoption leave

33.7.1 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.

33.7.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

- 33.7.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;

- 33.7.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and

- 33.7.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

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

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

33.7.5 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.

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

33.8 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 33.4.

33.9 Transfer to a safe job

33.9.1 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 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.

33.9.2 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.

33.10 Returning to work after a period of parental leave

33.10.1 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.

33.10.2 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 33.9, the employee will be entitled to return to the position they held immediately before such transfer.

33.10.3 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.

33.10.4 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.

33.10.5 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 employer 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.

33.11 Replacement employees

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

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

33.12 Communication during parental leave

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

33.12.1(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

33.12.1(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.

33.12.2 The employee shall take reasonable steps to inform the employer 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.

33.12.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 33.12.1.

34. JURY SERVICE

34.1 An employee other than a casual employee required to attend for jury service during his/her ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of the ordinary rate of pay they would have received Monday to Friday in respect of the ordinary time they would have worked had the employee not been on jury service.

34.2 An employee shall notify the employer as soon as possible as to the date upon which the employee is required to attend for jury service.

34.3 Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount paid in respect of such jury service.

35. PUBLIC HOLIDAYS

35.1 In addition to any other leave entitlements that an employee may have under this award, the following days will be observed as holidays:

- New Year's Day;
- Good Friday;
- Easter Saturday;
- Easter Monday;
- Christmas Day;
- Boxing Day;
- Australia Day;
- Anzac Day;
- Queen's Birthday; and
- Labour Day.

35.2 The following day will also be approved as a holiday if it is declared as a public holiday by the Government of the State of Victoria:

- Melbourne Cup Day or such other day in lieu as generally observed in the locality.

35.3 If the Government of the State of Victoria declares another day as a public holiday in substitution for one of the days listed in this clause, the substituted day will be observed as a holiday instead of the listed day.

35.4 If an employee works on both the actual day and the substituted day the employee will receive double time pay for only the actual day. The employee will receive ordinary pay for time worked on the substituted day. If an employee works on the actual day but not the substituted day or the substituted day and not the actual day, the employee will receive double the ordinary rate of pay.

35.5 If a part-time employee is usually rostered on a day of the week which happens to be the actual holiday, the employee will be given that day as leave and paid at ordinary rates. If the employee is asked to work on the actual day then the employee will be paid double time. If the employee is a casual employee and works on the actual public holiday the employee will be paid double the ordinary rate of pay applicable for a person at that casual employee's classification.

35.6 If in Victoria more days are declared public holidays by the State Government than those listed in this clause, the employee will be entitled to paid leave for those extra days.

35.7 If an employer and the employee agree, another day may be substituted for any of the holidays listed in this clause in which case the employee will not be paid a loading for working on the listed day.

35.8 An employee who is entitled to be paid double time for working on a public holiday may elect no later than 48 hours after the public holiday to be paid ordinary time for working on the public holiday and granted an additional two days of time off in lieu. Such time off in lieu will be taken on such days as the employer designates within six months following the public holiday.

35.9 The double time payment will be inclusive of the ordinary time payment that the employee

would receive if the day was not a public holiday.

36. LONG SERVICE LEAVE

An employee is entitled to long service leave in accordance with the provisions of the *Long Service Leave Act 1992* (Victoria).

37. ACCIDENT PAY

37.1 From the commencement of this award should an employee meet with an accident at his/her place of employment and is subject to and qualifies for compensation under the accident compensation act presently in force in the states and areas covered by this award such employee shall have the amount received by way of compensation increased by the employer to the amount of the usual award weekly rate ruling at the time of such accident. The payment made by the employer shall be limited to a maximum period of 26 weeks.

37.2 For the purpose of this clause, place of employment for a weekly employee shall include on the way to work and on the way home from work.

37.3 For the purpose of this clause a casual employee place of employment shall include travelling directly from or to their place of employment.

37.4 Casual employees make-up pay shall be based on the number of hours worked per week over the last month, with present employer, or if less than one month the average for the time worked. The amount to be paid as the normal weekly rate of pay only (i.e. time and one-quarter).

SCHEDULE A - RESPONDENCY LIST

Arnold Thomas Becker 3rd Floor 395 Collins Street MELBOURNE 3000
Gill, Kane & Brophy 422 Collins Street MELBOURNE 3000
Glamour Law Pty Ltd 422 Collins Street MELBOURNE 3000
Halmus Nominees Pty Ltd 3rd Floor 385 Collins Street MELBOURNE 3000
Holding Redlich Solicitors 350 William Street MELBOURNE 3000
JN Zigouras & Co 52 Victoria Street CARLTON SOUTH 3053
Justice Nominees Pty Ltd 350 William Street MELBOURNE 3000
Maurice Blackburn & Co 550 Swanston Street CARLTON SOUTH 3053
Ronald Saine & Co 104 Lydiard Street SOUTH BALLARAT 3350
Ryan Carlisle Thomas 80 Collins Street MELBOURNE 3000
Slades & Parsons Pty Ltd 1st Floor 572 Lonsdale Street MELBOURNE 3000
Slater & Gordon 562 Lt Bourke Street MELBOURNE 3000
Slater & Gordon Services Pty Ltd 562 Lt Bourke Street MELBOURNE 3000
Stringer Clark 10 Henty Street PORTLAND 3305
Tonerley Pty Ltd 10 Henty Street PORTLAND 3305
Zabulon Pty Ltd 499 St Kilda Road MELBOURNE 3004 C/-550 Swanston Street CARLTON SOUTH 3053

DECLARATION - VICTORIA

[Common rule declared by [PR956287](#) from 01 May 05]

Further to the decision issued by the Commission on 8 March 2005 [[PR954623](#)] and pursuant to ss. 141 and 493A of the *Workplace Relations Act 1996* (the Act), the Commission makes the following declaration for a common rule award:

1. In this Declaration:

1.1 **the award** means the Victorian Legal Professional, Clerical and Administrative Employees Award 2004, as varied from time to time;

1.2 **employees** means employees in the industry who perform work of a kind that is covered by the award, but does not mean:

1.2.1 any person who is a partner director or manager of an employer or a person to whom such person has delegated the right to engage and terminate the employment of employees;

1.2.2 any person who performs work of a kind covered by the award where that person's employer's primary activity is not in the legal services industry, e.g. in house legal services employees employed by enterprises in other industries;

1.3 **employers** means employers who employ employees;

1.4 **the industry** means the legal services industry.

2. That save for and subject to the matters referred to in clauses 4 to 8 below, the whole of the terms of the award, as varied from time to time, except those specified in clause 3 below, shall be:

2.1 a common rule for the industry in Victoria and known as the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005;

2.2 binding on all employers in respect of the employment by them of employees;

2.3 binding on all employees; and

2.4 binding on the Australian Municipal, Administrative, Clerical and Services Union.

3. The following clauses of the award are not included in the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005:

3.1 clause 4 - Who is bound by this award;

3.2 clause 6 - Commencement and term of operation; and

3.3 clause 32 - Personal leave, clause 32 of the award shall apply save that the amount of personal leave an employee may take as sick leave shall be as follows:

Length of time worked for employer	Rate of accrual of paid sick leave (days)

Less than 3 months	0
3 months or more	8
Each year thereafter	8

4. The Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005 shall not apply to:

4.1 employers or employees where the employer's primary activity is not within the legal services industry; and

4.2 any fee earning employee.

4.2.1 For the purposes of this declaration and the award, an employee is a fee earning employee where:

4.2.1(a) he/she is an employee admitted to practice or entitled to be admitted to practice; or

4.2.1(b) he/she is an articled clerk; or

4.2.1(c) his/her principal function, as determined by the employer, is the performance of fee generating work.

5. Subject to 5.1 to 5.11 below, all provisions in the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005 are to operate from 1 May 2005.

5.1 With respect to redundancy payments for employees of employers who have fewer than 15 employees, only service on or after 1 May 2005 is to be taken into account for the purpose of calculating **service**.

5.2 With respect to redundancy payments for employees of employers who have 15 employees or more, only service on or after 1 May 2004 is to be taken into account for the purpose of calculating **service**. [Note: the agreement in respect of this issue is without prejudice to the position a party may put in roping-in proceedings.]

5.3 Any accident make-up pay clause is to apply in relation to any injury on or after 3 August 2004.

5.4 The wages clauses (including all allowances and penalty payments) are to commence operation from the first pay period on or after 2 May 2005.

5.5 With respect to clause 15 of the award, the relevant probationary period shall be a period not exceeding three months, and clauses 15.1 and 15.3 shall be modified accordingly.

5.6 With respect to clause 18.1 of the award, an employer may continue to utilise such mode of payment of employees' salary as is in place at the time of commencement of the common rule award.

5.7 Notwithstanding anything elsewhere contained in the award (including but not limited to clauses 31.9.4 and 31.9.5):

- 5.7.1** If the employer and employee agree an employee may be paid pursuant to an annualised remuneration package.
- 5.7.2** This clause applies to all employees covered by this award/declaration whose remuneration package is not less than 25% above the Grade 4 rate inclusive of superannuation and annual leave loading, currently \$43,290 (pro-rata for part-time employees) in clause 19 of the award as at 22 December 2004 and as varied from time to time, and thereby treated as the minimum benchmark remuneration package.
- 5.7.3** Where the employer and employee agree that the employee be paid an annual remuneration package in accordance with this clause the following provisions will apply:
- 5.7.3(a)** The employee will be exempt from the provisions of this award/declaration, subject to the review provisions in clause 5.7.3(c).
 - 5.7.3(b)** The employee is entitled to an agreement in writing which includes their starting and finishing times and annual salary paid in equal 12 monthly instalments or fortnightly.
 - 5.7.3(c)** The employee may, after 12 months of operation of this award/declaration and after each successive 12 months, request that a reconciliation be carried out by comparing the employee's actual salary and benefits and the earnings that would have accrued for the 12 month period under the terms of this award/declaration. Where such a request is made the employer will carry out the reconciliation. In the event that the employee's actual salary and benefits are less than the earnings which would have accrued under the terms of the award then the employer will pay the difference. If the review discloses that an employee has received less than the entitlements which he/she would have received if the award had applied during the 12 month period, the employee may revert back to payment of wages according to the award, and receive all award entitlements in lieu of the package.
- 5.7.4** All grievances that arise in this provision shall be subject to clause 11 - Dispute resolution procedure of the award.
- 5.7.5** Clauses 5.7.3(a), 5.7.3(b), 5.7.3(c) and 5.7.3(d) will apply to any employee who, prior to the date of the commencement of this award, has entered into a contract of employment providing for a remuneration package of not less than \$43,290 inclusive of superannuation and annual leave loading (pro-rata for part-time employees).
- 5.8** With respect to clause 22.1 of the award, an employer whose practice immediately prior to the commencement of the common rule award has been to pay meal allowances in the pay period immediately following the occasion when the entitlement has arisen, may continue to do so.
- 5.9** With respect to clause 27.7 of the award, payment of shift loadings will be calculated upon the applicable award rate.
- 5.10** With respect to clause 31.9.1 of the award, if at the commencement of this declaration the employer's mode of payment of annual leave is via Electronic Funds Transfer (EFT) there is no

obligation on the employer to pay an employee's annual leave entitlement in advance of the employee taking annual leave.

5.11 An employer who by written notice to an employee undertakes to pay leave loading in the employee's annual salary shall not be required to pay leave loading at the time annual leave is taken.

6. The Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005 shall not apply to employers respondent by any means to any other award of the Commission in respect of the employment by them of employees covered by that award.

7. This declaration shall not apply to a person with a disability who is eligible for a Disability Support Pension and who is employed by a supported employment service that receives funding under the *Disability Services Act 1986* (Cth) to provide support for that person. [See Note 1 below.]

8. An employer who is making superannuation contributions into a complying superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth), on behalf of an employee covered by this declaration, prior to the date of effect of this declaration is exempt from any provision in the award which specifies the fund or funds into which superannuation contributions are to be paid. [See Note 2 below.]

9. In the event of a dispute about the entitlement of an employer to set-off entitlements and benefits provided under a contract of employment made prior to the date of this declaration against entitlements and benefits required to be provided under the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005, the matter may be referred to a Board of Reference, consisting of a Member of the Commission, which shall determine whether or not such a set-off should be permitted having regard to what is fair and equitable in all the circumstances of the case, without regard to technicalities and legal forms.

9.1 An appeal lies from a decision of a Board of Reference to a Full Bench of the Commission.

9.2 This clause shall apply for a period of twelve months from the commencement date of the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005.

9.3 Any registered organisation bound by the terms of the Legal Professional, Clerical and Administrative Employees Victorian Common Rule Declaration 2005 shall be notified of the time and date of hearing in relation to any application made pursuant to this provision.

10. Nothing in this declaration reduces or in any way detracts from any accrued rights to any forms of leave including sick leave, annual leave, long service leave or parental leave to which employees or any of them have become entitled by accrual or otherwise prior to the commencement date in clause 11 below.

11. This declaration shall be an award of the Commission, shall come into force on 1 May 2005 and shall remain in force for a period of three months and thereafter in accordance with the Act. [See Note 3 below.]

Note 1

1. Disability Support Pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme.
2. The intention of this provision is limited to preventing the award from applying to sheltered workshops (i.e. supported employment services) - it does not prevent the award from applying to employees with disabilities in open employment.
3. Leave is reserved for any party to have this issue reconsidered in the light of any developments in the national process which is currently considering workplace relations issues for sheltered workshops. This national process includes the Disability Sector National Industry Consultative Council and any related applications that seek award coverage for sheltered workshops.

Note 2

1. The purpose of the exception above is to maintain the status quo in respect of employers who, as at the date of effect of the common rule declaration, are making superannuation contributions into a complying superannuation fund. These employers will not be required to change their existing arrangements. Nor will there be any requirement for the existing arrangements to be the subject of an agreement between the employer and employees. For the avoidance of doubt, the exception continues to apply to employers who are making superannuation contributions to complying superannuation funds which are successor funds (as defined in Regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth), or as amended or replaced by other legislation) into which benefits are transferred, after the date of effect of the common rule declaration, in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Regulations thereunder. Further, "existing arrangements" includes the making of contributions to such funds.
2. The exception is in respect of current and future employees of the employers who are entitled to the benefit of the exemption.
3. The exception does not apply to new businesses which are established after the date on which the award is declared to have effect as a common rule.
4. The exception only applies to employers who are required to apply the terms of the award by virtue of the Common Rule declaration. It does not apply to employers who are named respondents to the award or who are parties bound by virtue of the membership of an employer organisation.
5. The exception applies subject to any Commonwealth legislation to the contrary.

Note 3

Subject to s.113 of the *Workplace Relations Act 1996* and any order of the Commission, an award dealing with particular matters continues in force until a new award is made dealing with the same matters (see s.148 of the *Workplace Relations Act 1996*).

** end of text **