



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/7

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

AM2008/7 – PRIVATE SECTOR CLERICAL OCCUPATION

1. On 12 September 2008 the Australian Industrial Relations Commission ("the AIRC") issued a Statement releasing the exposure drafts for the priority industries AM2008/1-12.
2. These submissions deal with the exposure draft of the Clerks – Private Sector Award 2010 ("the Modern Clerks Award").

THE AIRC STATEMENT

3. In its statement, the AIRC makes the following comment:

"An occupational award for clerical employees in the private sector is considered necessary for clerical employees not otherwise covered by a modern industry award...Modern industry awards should cover all award covered employees in that industry as far as practical so that the number of awards applying to an employer is minimised."([2008] AIRCFB 717; paragraph 63).
4. At the outset AFEI submits that this approach is inappropriate for clerical employees. A number of parties who made submissions in the pre-drafting consultation process for this industry expressed the view that an occupational award for clerical employees was appropriate, with exceptions for some industry awards (such as hospitality, clubs, real estate etc) where reasons had already been established to include clerical employees in those industry awards. In this regard we support the submission of the Real Estate Employers Federation filed on 10 October 2008.

5. AFEI again submits that an occupational award covering clerical employees in the private sector generally is the correct approach in dealing with clerical employees. Indeed the coverage of clerical employees has, in the main, been traditionally covered by awards which apply only to clerical employees, with some exceptions as noted above. AFEI relies on our submissions filed in AM2008/7 on 1 August 2008 in urging the AIRC to re-consider the basis for a modern clerical industry award.

6. Furthermore, the AIRC in its statement of 12 September 2008 states:

“The precise scope of the award will not be finalised until the completion of the award modernisation exercise when the scope and application all industry awards is known.” (ibid paragraph 64).

7. Given the application of the Modern Clerks Award is unknown, it is not possible for the AIRC to be confident that the Modern Clerks Award meets the requirements of Part 10A of the *Workplace Relations Act 1996*, in particular s576A(2) of the Act.

THE MODERN CLERKS AWARD

Clause 4 – Application

8. Without knowing the true coverage of the Modern Clerks Award the AIRC cannot be satisfied that the terms and conditions of the Modern Clerks Award are appropriate and

consistent with Part 10A of the *Workplace Relations Act 1996*. With some exceptions, the majority of industrial instruments which apply to clerical employees are solely clerical awards. These industrial instruments have been made either by consent of relevant parties or (particularly in the case of NSW) after consideration by industrial tribunals.

9. The industrial instruments have developed throughout their history having regard to the nature of clerical work rather than industries in which clerical employees work. These industrial instruments have evolved over time to meet the changing requirements of clerical employees and the employers who employ them.
10. In particular, the NSW Clerical and Administrative Employees (State) Award ("the NSW Clerical Award") is the most judicially considered clerical award in Australia. Of recent times the classification structure, hours of work and annualised salary arrangements have all been considered in light of extensive evidence and argument before both single members and Full Benches of the Industrial Relations Commission of NSW.
11. In those cases, the nature of clerical work and the environment in which clerical employees work have all been considered. Indeed in *Kingmill Aust v Federated Clerks' Union* (106 IR 217) the Full Bench considered that the nature of clerical work continues to evolve and the phrase "*in any clerical capacity whatsoever*" allowed for changes in the nature of the work to occur. A modern award for clerical employees needs to keep pace with this evolution.

12. In our respectful submission the AIRC cannot be satisfied that awards covering clerical employees “*provide a fair minimum safety net of enforceable terms and conditions of employment for employees*” (s576A(2)(b)) of the *Workplace Relations Act 1996*) without knowing who the award is intended to apply to and therefore what a fair minimum safety net is for the employees and employers covered by the Award.
13. For example, the coverage of telephone canvassers (other than for the sale of goods) with appropriate terms and conditions were inserted into the NSW Clerical Award by way of a decision of Glynn J in *Clerical and Administrative Employees (State) Award* (NSWIRComm 345; 24 October 2003).
14. If it is the case that these employees are to be covered by the Modern Clerks Award then to impose the terms and conditions of the Modern Clerks Award on these employers would not provide a fair minimum safety net and would increase costs to employers, contrary to point 2(d) of the Ministerial Request.

Clause 11 – Casual Employment

15. AFEI submits the expression of casual loading in the Modern Clerks Award (at clause 11.2) should clearly state that it is in compensation for the benefits of permanent employment, i.e., that it is in lieu of such matters as annual leave, personal/carers leave, termination of employment and redundancy.

16. At clause 11.3 the Modern Clerks Award requires that a casual employee be paid at the termination of each engagement, unless weekly or fortnightly payment is agreed.
17. In our submission this clause imposes an unnecessary burden on employers that does not currently exist. In practice casual employees are paid at the same time as other employees generally by way of EFT. To impose this burden on employers to pay casual employees for each engagement, which may be more frequent than the remainder of the clerical workforce, is unnecessary and should be removed from the Modern Clerks Award.

Clause 14/Schedule A– Classifications

18. In our submission the appropriate classification structure for the Modern Clerks Award is the classification structure found in the NSW Clerical Award. This structure is superior as it is the most recently arbitrated classification structure for clerical employees and was made by Her Honour Justice Glynn in *Clerks (State) Award* (unreported decision; 25 October 1996).
19. The classification structure and rates of pay proposed by AFEI are attached to these submission as Attachment A.
20. This structure and its attached relativities were subject to extensive evidence from employers and employees. In making the classification structure Her Honour held:

“While the needs of any one employer may be limited to some two, three or four levels of the proposed structure, the five level structure proposed by the Catholic Hierarchy provides flexibility and appropriate gradations of skills to allow an

employer to select those grades most apposite to fit the work required to be done at a particular workplace. It also provides a career path for clerical employees.” (at page 56).

21. In our submission the AIRC can be satisfied that the classification structure is one which is appropriate for clerical employees and ensure that it provides a fair minimum and enforceable safety net for employees, consistent with s576A(2)(b) of the *Workplace Relations Act 1996*.
22. Indeed, the classification structure was accepted and adopted by the then Federated Clerks Union and employer parties in a number of other NSW awards applying to clerical employees. The level of disputation in relation to the classification structure in NSW has been minimal. In our submission the structure to easy to understand and easy to apply, consistent with s576A(2)(a) of the *Workplace Relations Act 1996*.

Clause 17 - Allowances

23. The Modern Clerks Award provides for certain allowances to be paid as a percentage of the standard rate in the award.
24. In our submission allowances should be in a form that are easy to understand and have practical application to the situations in which they are payable. Allowances should reflect the actual cost in the context concerned and modern awards should contain appropriate adjustment mechanisms.
25. Furthermore, in relation to expense related allowances, this is not an appropriate mechanism by which to increase an allowance which is intended to reflect the level of monetary compensation which should be paid in relation to expense

related allowances. In particular, we refer to 17.3 – Meal Allowance and 17.4 – Vehicle Allowance.

26. Expense-related allowances such as these have historically been adjusted to reflect movements in the relevant CPI figure as a cost indicator for that particular allowance. This has been the case at the NSW level and in federal awards when safety net (and Wages and Allowances) adjustments are made.
27. AFEI submits that there is no good reason for the commission to deviate from established methods and principles for adjusting expense related allowances especially where future wage fixing criteria is uncertain and it is unclear that providing a flow on effect would result in accurate adjustments to such allowances.
28. AFEI notes the submission of ACCI filed 10 October 2008 and in particular paragraph 161 on page 41 and supports those submissions.

Clause 22 – Ordinary Hours of Work (other than Shift Workers)

29. Clause 22 provides for ordinary hours of work to be worked within the following spread:
 - 7.00am to 7.00pm Monday to Friday; and
 - 7.00am to 12.30pm Saturday.

30. The deficiency created by the spread of hours is not apparent until it is read in conjunction with Clause 24 – Overtime Rates and Penalties. The effect of Clause 24 is to render any hours worked outside of the spread as overtime hours (except in the case of shift work). This means that hours performed on Saturday afternoon and Sunday (other than shift work) must be worked as overtime and paid at overtime rates, and cannot count towards an employee's total number of ordinary hours worked in any one week.
31. Such an hours regime ignores modern working practices where it is not unusual for employers to open their businesses on weekends. A modern award should not restrict an employer to operate on a weekend, nor should it deny employment opportunities for employees with employers who operate on weekends.
32. The Modern Clerks Award should provide for ordinary hours to be worked within the same spread of 7.00am to 7.00pm on both Saturday and Sunday subject to appropriate penalty rates.
33. The issue of weekend work for clerical employees was considered by a Full Bench of the Industrial Relations Commission of NSW in 2005. During that case there was no disagreement between employers and the union that the NSW Clerical Award should provide for ordinary hours to be worked on weekends. Indeed much of the evidence considered in that case, particularly that of the employers, reflected the need for ordinary hours to be available on weekends.

34. There are a number of reasons employers now operate on weekends. Customer demand and technological change can affect the hours of operation of an employers business. A more global economy has also seen more employers operating during the evening and on weekends to meet global demand. It is inconsistent with s576A(2)(c) for the AIRC to place restrictions on such work, effectively restricting employment opportunities.
35. The provision of ordinary hours to be worked on a Saturday and Sunday is consistent with s576A(2)(c) in that it promotes flexible modern work practices, particularly for those employees with family responsibilities.
36. Furthermore, AFEI has included appropriate penalties of time and one-quarter for work performed on Saturday and time and one-half for work performed on Sunday. It is well established in NSW that these are the appropriate penalty rates for weekend work and reflects the need for employers to engage employees on weekends rather than acting as a deterrent for such employment opportunities (see *Re Crown Employees (Teachers' Education Teaching Service) Award and Other Awards*; unreported; Fisher P, Bauer and Hungerford JJ; IRC Matter No.'s 90/515, 89/566 and 89/1619; 7 August 1991, *Re Hairdressing and Beauty Treatment (State) Conciliation Committee*; unreported; Fisher P, Bauer J and Connor CC; IRC Matter No.'s 87/1232 and 87/1236; 20 November 1989, *Private Pathology (State) Award; Re Fruit Growing Industry (State) Award*; unreported; Fisher P, Cahill VP, Cullen J and Buckley CC; IRC Matter No.'s 88/390 88/391, 88/616, 89/1001, 89/1023, 89/1024 and 90/737; 23 August 1991;).

37. Ordinary hours on weekends are dealt with at proposed clause 8 of the draft award filed by AFEI on 20 August 2008. This clause is attached to these submissions at Attachment B.
38. This clause adequately deals with the provision of ordinary hours on weekends within an appropriate spread at appropriate penalty rates and cures the deficiency contained in the Modern Clerks Award at clause 22 and 24. It is our submission that this clause should prevail over clauses 22 and 25 of the Modern Clerks Award.

OTHER MATTERS

Exemptions Provision/Annualised Salary Arrangements

39. An exemptions provision currently operates in the NSW Clerical Award. AFEI submits that such a provision is necessary in the Modern Clerks Award.
40. The exemptions clause is a long-standing clause of the NSW Clerical Award and is used by a significant proportion of employers who employ clerical employees. The clause provides flexibility for employers by allowing for an over award payment mechanism which provides greater flexibility, and employees enjoy, in the aggregate, a higher salary for all purposes, including while on annual leave.
41. The history of the exemptions clause is outlined in *Clerks (State) Award* (unreported decision of Bauer and Cullen JJ and Redman CC; 11 May 1993) at pages 13 to 16. In finding that

the exemption clause should remain in the NSW Clerical Award, the Full Bench held:

"The exemption clause has been demonstrated to have been a feature of this important award, other clerks' awards and the federal clerks' award over a significant number of years."

42. There is no evidence to suggest that this is no longer the case. Many employers and employees have taken advantage of the clause and the flexibility it provides. AFEI continues to canvass members in relation to this issue, however, the current response shows a significant number of employers and clerical employees utilise this clause. In our submission, this illustrates the need for the Modern Clerks Award to include such a provision.
43. Not only would the retention of such a provision ensure that employers and employees continue to be able to access the flexibility provided by such a provision, it would ensure that the significant number of employees in NSW, at least those who are paid on a salary are not left in a problematic legal position in relation to their current salary and new award conditions which would result in double counting.
44. This issue was considered by the Full Bench in *Clerks (State) Award* (ibid) where the Full Bench found when considering the inclusion of a proviso in the context of the removal of the exemptions clause (at pages 40 to 41):

"By 'double counting' what appears to have been meant is that clerks who fell within the exempt category and fell within sub-categories 2B, 2C earlier discussed, having the benefit of a salary fixed to take into account that penalties were not

paid, would as a result of the variation commence to receive those penalties.

...

The working out of the proviso clause seems fraught with pitfalls and potential challenges. If the proviso were meant to allow the employer to reduce the money amount of the wage as a set-off against the imposition of penalty rates a potential for industrial strife and animosity appears. Such an approach would seem to fall well outside the instruction that there should be genuine award restructuring rather than cost cutting measures. No discernible benefit for the employer is obvious either on flexibility or efficiency.

If it was not intended that the employer could reduce the weekly wage paid on the basis of the requirement to pay the higher wage with calculated penalty rates, it is difficult to see how the proviso meets the valid concern of double counting. In the metropolitan areas of Sydney the effect of the removal of the exemption clause, whether accompanied by the proviso or not, is that the employers as to one half at least of all clerical staff might become legally responsible to pay penalty rates.

The decision, whether the proviso were included or not, would result in an increase in the gross wage costs unaccompanied by production increase, award restructure, enhanced career opportunities or workplace flexibility."

45. In our submission it would be contrary to s576A(2)(c) of the Act to exclude such a provision from a Modern Clerks Award. Furthermore, annualised salary arrangements are a term which can be dealt with in modern awards in accordance with s576J.
46. In our submission there is no good reason to exclude such a provision in the Modern Clerks Award. Firstly it already exists in the form of the exemptions clause of the NSW Clerical Award (a NAPSA) – a feature considered by the AIRC to be of some weight in determining the need for such a provision.

47. Similarly, the provision in the NSW Clerical Award is heavily utilised and would act to increase costs to employers and disadvantage employees if it were not included in the Modern Clerks Award. This is contrary to point 2(c) and (d) of the Ministerial Request.

SALARY PACKAGING

48. At clause 14 of the draft award filed on 20 August 2008, AFEI proposed a salary packaging clause in the same terms as the clause applying in the NSW Clerical Award. We also note clause 10.3 of the Mining Industry Award provides for a salary sacrifice provision in similar terms.
49. Under the NSW Clerical Award employees have been able to enjoy the terms of the salary packaging clause and it would disadvantage those employees if it were not included. It is our submission that a salary packaging clause should be included in the Modern Clerks Award either in the terms proposed by AFEI in the clause attached to these submissions at Attachment C, or in the same terms as contained in the Mining Industry Award.

Tanya McDonald
Divisional Manager – Employee Relations
Australian Federation of Employers and Industries
10 October 2008

tanyam@ef.org.au

ATTACHMENT A**X. CLASSIFICATIONS AND WAGE RATES**

Classifications

- x.i All adult employees shall be graded in one of the following grades and informed accordingly in writing within 14 days of appointment to the position held by the employee and subsequent graded positions.
- x.ii An employee shall be graded in the grade where the principal function of his/her employment, as determined by the employer, is of a clerical nature and is described this clause.
- x.iii Grade 1
- (a) A Grade 1 position is described as follows:
- (i) The employee may work under direct supervision with regular checking of progress.
 - (ii) An employee at this grade applies knowledge and skills to a limited range of tasks. The choice of actions required is clear.
 - (iii) Usually work will be performed within established routines, methods and procedures that are predictable, and which may require the exercise of limited discretion.

Indicative tasks of a Grade 1 position are:

UNIT	ELEMENT
Information Handling	<ul style="list-style-type: none"> • Receive and distribute incoming mail • Receive and dispatch outgoing mail • Collate and dispatch documents for bulk mailing • File and retrieve documents
Communication	<ul style="list-style-type: none"> • Receive and relay oral and written messages • Complete simple forms
Enterprise	<ul style="list-style-type: none"> • Identify key functions and personnel • Apply office procedures
Technology	<ul style="list-style-type: none"> • Operate office equipment appropriate to the tasks to be completed • Open computer file, retrieve and copy data • Close files
Organisational	<ul style="list-style-type: none"> • Plan and organise a personal daily work routine
Team	<ul style="list-style-type: none"> • Complete allocated tasks
Business Financial	<ul style="list-style-type: none"> • Record petty cash transactions • Prepare banking documents • Prepare business source documents

x.iv Grade 2

(a) A Grade 2 position is described as follows:

- (i) The employee may work under routine supervision with intermittent checking.
- (ii) An employee at this grade applies knowledge and skills to a range of tasks. The choice of actions required is usually clear, with limited complexity in the choice.
- (iii) Work will be performed within established routines, methods and procedures, which involve the exercise of some discretion and minor decision making.

Indicative tasks of a Grade 2 position are:

UNIT	ELEMENT
Information Handling	<ul style="list-style-type: none"> • Update and modify existing organisational records • Remove inactive files • Copy data on to standard forms
Communication	<ul style="list-style-type: none"> • Respond to incoming telephone calls • Make telephone calls • Draft simple correspondence
Enterprise	<ul style="list-style-type: none"> • Provide information from own function area • Re-direct inquiries and/or take appropriate follow-up action • Greet visitors and attend to their needs
Technology	<ul style="list-style-type: none"> • Operate equipment • Identify and/or rectify minor faults in equipment • Edit and save information • Produce document from written text using standard format • Shutdown equipment
Organisational	<ul style="list-style-type: none"> • Organise own work schedule • Know roles and functions of other employees
Team	<ul style="list-style-type: none"> • Participate in identifying tasks for team • Complete own tasks • Assist others to complete tasks
Business Financial	<ul style="list-style-type: none"> • Reconcile invoices for payment to creditors • Prepare statements for debtors • Enter payment summaries into journals • Post Journals to ledger

x.v Grade 3

(a) A Grade 3 position is described as follows:

- (i) The employee may work under limited supervision with checking related to overall progress.
- (ii) An employee at this grade may be responsible for the work of others and may be required to co-ordinate such work.
- (iii) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. Usually work will be performed within routines, methods and procedures where some discretion and judgement is required.

Indicative tasks of a Grade 3 position are:

UNIT	ELEMENT
Information Handling	<ul style="list-style-type: none"> • Prepare new files • Identify and process inactive files • Record documentation movements
Communication	<ul style="list-style-type: none"> • Respond to telephone, oral and written requests for information • Draft routine correspondence • Handle sensitive inquiries with tact and discretion
Enterprise	<ul style="list-style-type: none"> • Clarify specific needs of client/other employees • Provide information and advice • Follow-up on client/employee needs • Clarify the nature of a verbal message • Identify options for resolution and act accordingly
Technology	<ul style="list-style-type: none"> • Maintain equipment • Train others in the use of office equipment • Select appropriate media • Establish document structure • Produce documents
Organisational	<ul style="list-style-type: none"> • Co-ordinate own work routine with others • Make and record appointments on behalf of others • Make travel and accommodation bookings in line with given itinerary
Team	<ul style="list-style-type: none"> • Clarify tasks to achieve group goals • Negotiate allocation of tasks • Monitor own completion of allocated tasks
Business Financial	<ul style="list-style-type: none"> • Reconcile accounts to balance • Prepare bank reconciliations

UNIT	ELEMENT
	<ul style="list-style-type: none"> • Document and lodge takings at bank • Receive and document payment/takings • Dispatch statements to debtors • Follow-up and record outstanding accounts • Dispatch payments to creditors • Maintain stock control records

x.vi Grade 4

(a) A Grade 4 position is described as follows:

- (i) The employee may be required to work without supervision, with general guidance on progress and outcomes sought. Responsibility for the organisation of the work of others may be involved.
- (ii) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks, and the range and choice of actions required will usually be complex.
- (iii) An employee at this grade applies competencies usually applied within routines, methods and procedures where discretion and judgement is required, for both self and others.

Indicative tasks of a Grade 4 position are:

UNIT	ELEMENT
Information Handling	<ul style="list-style-type: none"> • Categorise files • Ensure efficient distribution of files and records • Maintain security of filing system • Train others in the operation of the filing system • Compile report • Identify information source(s) inside and outside the organisation
Communication	<ul style="list-style-type: none"> • Receive and process a request for information • Identify information source(s) • Compose report/correspondence
Enterprise	<ul style="list-style-type: none"> • Provide information on current service provision and resource allocation within area of responsibility • Identify trends in client requirements

UNIT	ELEMENT
Technology	<ul style="list-style-type: none"> • Maintain storage media • Devise and maintain filing system • Set printer for document requirements when various set-ups are available • Design document format • Assist and train network users • Shutdown network equipment
Organisational	<ul style="list-style-type: none"> • Manage diary on behalf of others • Assist with appointment preparation and follow up for others • Organise business itinerary • Make meeting arrangements • Record minutes of meeting • Identify credit facilities • Prepare content of documentation for meetings
Team	<ul style="list-style-type: none"> • Plan work for the team • Allocate tasks to members of the team • Provide training for team members
Business Financial	<ul style="list-style-type: none"> • Prepare financial reports • Draft financial forecasts/budgets • Undertake and document costing procedures

x.vii Grade 5

(a) A Grade 5 position is described as follows:

- (i) The employee may be supervised by professional staff and may be responsible for the planning and management and evaluation of the work of others.
- (ii) An employee at this grade applies knowledge with substantial depth in some areas, and a range of skills, which may be varied or highly specific. The employee may receive assistance with specific problems.
- (iii) An employee at this grade applies knowledge and skills independently and non-routinely. Judgement and initiative are required.

Indicative tasks of a Grade 5 position are:

UNIT	ELEMENT
Information Handling	<ul style="list-style-type: none"> • Implement new/improved system • Update incoming publications • Circulate publications • Identify information source(s) inside and outside the organisation
Communication	<ul style="list-style-type: none"> • Obtain data from external sources • Produce report • Identify need for documents and/or research
Enterprise	<ul style="list-style-type: none"> • Assist with the development of options for future strategies • Assist with planning to match future requirements with resource allocation
Technology	<ul style="list-style-type: none"> • Establish and maintain a small network • Identify document requirements • Determine presentation and format of document and produce it
Organisational	<ul style="list-style-type: none"> • Organise meetings • Plan and organise conference
Team	<ul style="list-style-type: none"> • Draft job vacancy advertisement • Assist in the selection of staff • Plan and allocate work for the team • Monitor team performance • Organise training for team
Business Financial	<ul style="list-style-type: none"> • Administer PAYE salary records • Process payment of wages and salaries • Prepare payroll data

x.viii List of Employees Graded

An employer shall keep a list of employees and the grade in which they are employed pursuant to 4.1, and each employee shall be notified in writing within 14 days of appointment to that and subsequent graded positions.

Wage Rates**TABLE 1 - ADULT WAGES**

Grade	Rate of Pay \$
1	563.60
2	584.50
3	618.20
4	659.90
5	720.50

ATTACHMENT B

X. HOURS OF WORK

- x.i The ordinary hours of work, exclusive of meal breaks, shall not exceed an average of 38 per week over a four-week cycle. Except as provided for in sub-clause 8.4, ordinary hours shall be worked between the hours of 6.00am and 7.00pm, Monday to Friday.
- x.ii The ordinary hours may be worked up to a maximum of ten hours per day.
- x.iii The starting time, once fixed, shall not be altered without seven days' notice being given by the employer. However, in an emergency, an employer and an employee may agree to change such employee's commencing and ceasing times with less than seven days' notice.

x.iv Shift Work

(i) Definitions

An employee who works day work may also perform shift work or a combination of day and shift work.

- (a) A "*shift worker*" means an employee whose ordinary hours of work include any of the shifts defined in sub-clause.
- (b) "*Seven-day shift worker*" means an employee who is rostered to work on a continuous shift basis and regularly works on Sundays and public holidays.

Shifts

- (a) "*Afternoon shift*" means any shift finishing after 7:00pm and at or before 11:00pm provided that where the majority of employees in an establishment finish afternoon shift at a later time, up to 12 midnight, clerical employees may be required to work the same hours.
- (b) "*Night shift*" means any shift starting at or after 11:00pm and at or before 5:00am or finishing subsequent to 11:00pm and at or before 6:00am.

- (c) *"Permanent night shift"* means a night shift which does not rotate with another shift or shifts or day work and which continues for a period of not less than four consecutive weeks.
- (d) *"Early Morning shift"* applies to an employee whose ordinary hours on a regular shift commence between 5:00am and 6:00am except where such a shift is part of a shift system and preceding an afternoon shift finishing at 11:00pm.
- (e) *"Saturday shift"* means all ordinary time worked on a Saturday in accordance with the defined shifts in subclauses 8.5.1 to 8.5.4 above, or between the hours of 6.00am and 6.00pm.
- (f) *"Sunday shift"* means all ordinary time worked on a Sunday in accordance with the defined shifts in subclauses 8.5.1 to 8.5.4 above, or between the hours of 6.00am and 6.00pm.

x.v. Hours, Shift Allowances, Special Rates, Meal Interval

Notwithstanding any other provisions of this award and subject to the provisions of subclauses 8.4.1 to 8.4.3 above, an employee may be employed upon shifts, in which case the ordinary hours shall not exceed eight in any consecutive twenty-four; or forty per week; or eighty in fourteen consecutive days; or one hundred and fifty-two in any twenty-eight consecutive days.

- (a) Provided that the ordinary hours of work prescribed herein may be worked up to 10 hours on any day. In any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day but not more than 10, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned. In addition the arrangement shall average 38 hours per week over the shift cycle.
- (b) Times of beginning and ending the shift of any employee may in any case be varied by agreement between the employer and the employee or in the absence of agreement may be varied by at least one week's notice given by the employer to the employee.

- (c) A shift worker employed on shift shall for work done during the ordinary hours of any such shift be paid ordinary rates plus the following additional percentage of the graded rate of pay applicable.

Afternoon shift	-	at the rate of 17 per cent
Night shift	-	at the rate of 20 per cent
Permanent night shift	-	at the rate of 26 per cent
Early morning shift	-	at the rate of 10 per cent

Allowances in accordance with this clause shall be calculated in multiples of 10 cents, amounts of less than 5 cents being taken to the lower multiple and amounts of 5 cents or more being taken to the higher multiple.

- x.vi Juniors - Junior employees working Shift Work shall be paid as follows:
- (i) A junior who is equivalent to Grade 3 or higher, shall be paid the additional percentage of the Grade 3, Adult Rate.
 - (ii) All other junior employees shall be paid the additional percentage of the Grade 1, Adult Rate.
- x.vii A shift worker whose rostered day off coincides with a public holiday shall be paid a day's pay additional to his/her weekly wage, or have a day added to his/her annual leave.
- x.viii A shift worker whose ordinary working period includes a Saturday, Sunday or holiday as an ordinary working day shall be paid:
- | | | |
|----------|---|--------------------------|
| Saturday | - | time and one-quarter |
| Sunday | - | time and one-half |
| Holidays | - | double time and one-half |
- x.ix Where ordinary shift hours commenced between 11:00pm and midnight on a Sunday or holiday, the ordinary time worked before midnight shall not entitle the shift worker to the Sunday or holiday rate. Provided that the ordinary time worked by a shift worker on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as ordinary time worked on such Sunday or holiday.
- x.x At least twenty minutes shall be allowed to a night shift, afternoon shift or early morning shift worker for a meal during each shift before the expiration of five hours. Such meal break shall be counted as time worked.

Overtime

- x.i All time worked by a shift worker in excess of the hours provided in subclause 8.6.1 shall be paid time and one-half for the first two hours and double time thereafter. In computing overtime, each day shall stand-alone.
- x.ii A shift worker required to work overtime in excess of one hour on any shift shall be paid meal money, as set in Item 2 of Table 2 - Other Rates and Allowances of Part B - Monetary Rates. If overtime exceeds five hours on any shift a further meal allowance of the same amount shall be paid.
- x.iii Special Rates Not Cumulative

The penalties herein prescribed are in substitution for and not cumulative upon the shift allowances prescribed in subclause x.

- x.iv Restrictions on Shift Work
 - (i) No employee under 18 years of age shall be employed on night, afternoon or early morning shifts.
 - (ii) Employees under 21 years of age shall not be employed on the night shift, except employees not younger than 19 years of age whilst working on a training programme. The restriction on night shift shall not apply in these cases.

ATTACHMENT C**X. SALARY PACKAGING**

- x.i Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- x.ii Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- x.iii The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
 - (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
 - (b) the employee will be given the opportunity by the employer to seek independent advice including advice from the union prior to entering into any salary packaging agreement;
 - (c) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
 - (d) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
 - (e) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;

- (f) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
 - (i) The ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
 - (ii) The applicable rate for the employee's grade;
- (g) notwithstanding any of the above arrangements, the employer of employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (h) the calculation of entitlements concerning occupational superannuation will be based on the ordinary time rate of pay that the employee would have received in the absence of the salary packaging arrangement;

Unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.