

**New South Wales Government**

**Submission to the Australian Industrial  
Relations Commission**

**Award Modernisation in the  
Hospitality Industry**

**July 2008**

# Table of Contents

Overview .....	3
Background.....	4
Part 1 NSW Community Standards.....	4
1.1 NSW Community Standards in Awards .....	5
Secure Employment Test Case .....	6
Family Provisions Test Case .....	7
Equal Remuneration Principle .....	7
Redundancy.....	8
Hours of Work – Reasonable Hours Test Case .....	9
1.2 NSW Community Standards in Legislation .....	9
Annual Holidays Act 1944.....	10
Long Service Leave Act 1955 .....	11
Employment Protection Act 1982.....	12
Industrial Relations Act 1996 .....	13
1.3 Why specific NSW Award provisions should be preserved.....	13
1.4 Maintaining the Relevance of Modern Awards .....	15
1.5 Support for training provisions as existing NSW standards .....	17
Conclusion.....	18
Part 2 – Comparison of provisions of NSW Awards with NES and allowable award matters .....	20
NSW Project/Enterprise Awards within Hospitality Industry .....	28
Part 3 – NSW Award Conditions .....	29
Industry Analysis Prepared for the NSW Office of Industrial Relations .....	30
Appendix A .....	31
Introduction .....	33
Analysis Groups – Australia at Work .....	33
Analysis Groups – ESWIRS .....	33
Hospitality .....	35
Appendix A: Tables for all Australian employees.....	43
Appendix B: Sample Counts .....	46

## Overview

1. In its 20 June 2008 decision, the Full Bench determined that:

in relation to pre-drafting consultations for the priority modern awards all written submissions, draft modern awards and other proposals concerning the scope, content and transitional arrangements should be lodged with the Commission by 25 July 2008.<sup>1</sup>
2. This submission of the NSW Government addresses the content of a potential modern award in the hospitality industry, principally from the position of advocating that it reflect community standards and award entitlements contained in NSW awards and legislation. Those employed in the hospitality industry in NSW whose conditions of employment are no higher than those set by an industrial instrument, overwhelmingly receive conditions set by NSW awards (now NAPSAs). Given the enjoiner not to disadvantage employees or increase costs for employers (Ministerial Request, paragraph 2(c) and (d)), the Australian Industrial Relations Commission (the Commission) will have a particular need to examine carefully the NAPSA conditions that currently apply in NSW to such employees.
3. All modern awards should contain conditions that reflect and preserve well-established community standards. While they may differ to some extent, they would be largely consistent across modern awards. It is submitted that in determining those general conditions the Commission would have careful regard of the standards created by the Industrial Relations Commission of New South Wales (IRC) and contained in State awards, and standards contained in NSW legislation. It is important to ensure that the creation of modern awards does not undermine existing conditions of employment. Part 1 of this submission, which is common to the submissions being filed for all fourteen priority industries, identifies the community standards created by NSW awards and legislation. It is submitted that all modern awards would contain terms that reflect, and preserve these standards.
4. Specifically this submission:
  - In **Parts 1.1 and 1.2**, identifies the principles and community standards found in NSW awards and legislation that the NSW Government contends should be preserved in modern awards
  - In **Part 1.3**, sets out reasons why specific provisions found in NSW awards, now NAPSAs, that currently apply in certain industries, should be maintained

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<sup>1</sup> AIRC Print No PR062008 20 June 2008, para 195

- In Part 1.4, describes why it is important that modern awards are drafted with the intention that they be capable of being updated
- In Part 1.5, advocates that modern awards should be drafted in a manner that promotes training and skills development
- In Part 2, identifies the relevant NSW State awards (including NSW State Awards that the Commission has not previously identified as relevant) and lists in a table the types of clauses found in those awards by reference to the matters that can be dealt with under the National Employment Standards or as matters that can be contained in an award pursuant to s576J on the understanding that the Commission when making a modern award would, in respect of each subject, refer to the relevant State award provision;
- Also in Part 2, identifies those NSW State Awards that, as a result of NSW legislation, were converted to State enterprise agreements before 27 March 2006 and so are not NAPSAs, but rather Preserved State Agreements
- In Part 3, identifies specific NSW State award conditions that should be maintained in a modern award applying to this industry

## Background

5. In its first submission to the Full Bench, the NSW Government said:

A strong, effective and relevant award system, together with an independent tribunal with broad powers, are the key elements of the NSW industrial relations jurisdiction. The NSW Government is concerned to ensure that the employees and employers who currently enjoy the benefits of that system are not left worse off by the award modernisation process.<sup>2</sup>

6. This remains the NSW Government's broad objective. In the context of considering the fourteen priority industries, the NSW Government is concerned to ensure that the modern awards should provide outcomes at least as beneficial as current NSW provisions.

## Part 1 NSW Community Standards

7. The NSW award system has been in place for over a century, with the current legislative framework being set by the *Industrial Relations Act 1996* (IR Act). During this period, decisions of the IRC have created what have become recognised as community standards, reflected in award provisions found generally in NSW State awards. In addition, the

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<sup>2</sup> NSW Govt Submission to the AIRC Award Modernisation para 9

legislature has set various minimum conditions for NSW employees, in some cases irrespective of whether those employees are subject to a particular award.

8. Broadly speaking, the policy objective of the NSW Government has been to give primacy to the award system as the means of setting conditions that are fair and just. Most NSW community standards are therefore the result of State decisions which have been subsequently applied to NSW awards at large. A minority of standard conditions are contained in legislation.
9. For many employers and employees, NSW common rule awards are the sole means of regulating their industrial relations, apart from the general law. In this sense, NSW awards are more than a base from which employees are expected to bargain.
10. Common rule awards also supply a level playing field for employers, ensuring that they need not compete on the price of labour, rather focusing their energies on competing on the quality of their products and services.
11. The next two sub-sections set out the NSW community standards which in turn appear in awards and legislation.
12. As set out above while they might differ in their detail, all modern awards should contain conditions that reflect and preserve well-established community standards. In determining those general conditions the Commission would have careful regard of the following standards created by the IRC and contained in State awards and contained in NSW legislation. It is submitted that all modern awards would contain terms that reflect, and preserve these standards.

## **1.1 NSW Community Standards in Awards**

13. Legal authority to make State decisions arises out of Ch 2 Part 3 of the IR Act, and primarily s51 of that Act, which provides:

### **51 Making of State decisions**

- (1) A Full Bench of the Commission may, if satisfied that it is consistent with the objects of this Act and that there are good reasons for doing so, make a State decision setting principles or provisions for the purposes of awards and other matters under this Act.
- (2) A Full Bench of the Commission may make a State decision only on the application of a State peak council or on its own initiative.
- (3) A State decision may apply generally to all awards or other matters under this Act or only to particular awards or other matters under this Act.

- (4) The principles or provisions of a State decision may be varied by a Full Bench of the Commission.
14. State decisions may apply to particular awards either on application (see for example *State Wage Case 2008* [2008] NSWIRComm 103 (27 June 2008), para 336(2)), or by means of a general order pursuant to s52 of the IR Act (see for example *Family Provisions Case 2005* [2005] NSWIRComm 478 (Decision para 2)).
15. The IR Act provides for some minimum conditions to apply to all awards, in relation to:
- Maximum ordinary hours of employment (s22)
  - Equal Remuneration and other conditions (s23)
  - Employment protection provisions (s24)
  - Provisions relevant to technological change (s25)
  - Minimum sick leave entitlements (s26)
16. In this regard, it should particularly be noted that s27 prohibits the cashing-out of sick leave in all NSW awards.
17. State Decisions relevant to the priority awards are listed in the subsequent paragraphs.

### **Secure Employment Test Case**

18. The *Secure Employment Test Case* decision was handed down by the IRC on 28 February 2006<sup>3</sup>. The decision deals with the ability of casuals to choose to convert to permanent employment after a period of six months of employment.
19. In its decision, the IRC established a right for casuals with a regular and systematic work history to seek conversion to permanent full-time or part-time employment.
20. Employers must give casual employees written notice of their right to become permanent within four weeks of their completing a six month period of employment. Employees must reply in writing within four weeks or will be regarded as not wishing to convert.
21. The decision also requires employers who engage a labour hire or contract business to perform work on the employer's premises to (either directly or through the labour hire/contract business) consult with those employees regarding OHS arrangements and ensure the provision of induction training and protective equipment.

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<sup>3</sup> Secure Employment Test Case [2006] NSWIRComm 38

22. The provisions within the test case decision were required to be applied for on an award by award basis by the relevant state industrial organisation(s).

### **Family Provisions Test Case**

23. The IRC flowed on (with modifications) the Commission's *Family Provisions Case 2005*<sup>4</sup> by general order in December of that year.

24. The *NSW Family Provisions Case 2005*<sup>5</sup> model award clause concerns caring and parental leave rights and responsibilities and affects employers and employees under NSW state awards.

25. Following the NSW decision the following conditions could be requested by employees who qualify for parental leave. These new award based conditions are in addition to the parental leave rights and responsibilities under the IR Act:

- increase their simultaneous unpaid parental leave to eight weeks
- extend their unpaid parental leave from 52 weeks to 104 weeks
- return from parental leave on a part-time basis until the child reaches school age.

26. The employer must consider requests of this type, having regard for the employee's circumstances and may only refuse the request on reasonable grounds.

27. The IRC also broadened the reasons for use of sick leave for caring responsibilities to include occasions where an employee has to care for a family or household member due to an unexpected emergency.

28. The decision also made certain provisions for casual employees. Subject to appropriate evidence, casuals can be absent from work in order to care for a relevant person who is ill, has given birth to a child or because of some unexpected emergency. The period of the absence is by agreement and is unpaid. If agreement cannot be reached the casual worker is entitled to be absent for up to 48 hours (two days).

29. Casual employees are also entitled to be absent from work in the case of the death in Australia of a person with whom they had a relationship of the type defined in the personal/carers leave clause of the applicable award.

### **Equal Remuneration Principle**

30. Community standards in regard to pay equity and equal remuneration are well established in the NSW industrial relations system.

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<sup>4</sup> [PR802005]

<sup>5</sup> Family Provisions Case 2005 [2005] NSWIRComm 478

31. The *2000 Pay Equity Case (Re Equal Remuneration Principle* [2000] NSWIRComm 113) resulted in the establishment of a Wage Fixing Principle (currently Principle 14) which specifically permitted claims to be made ‘for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis’.
32. This Principle has been subsequently applied in cases such as *Re Miscellaneous Workers Kindergartens and Child Care Centres &c (State) Award* [2006] NSWIRComm 73 (1 September 2006). It is clear from the operation of these provisions that parties to NSW awards currently have a mechanism to address issues of pay equity in relation to specific awards, and put in place particular measures to address those issues.

## Redundancy

33. Sections 84 and 85 of the former *Industrial Relations Act 1991* (retained at s21 of the current IR Act) require the IRC upon application to insert employment protection provisions in awards by variation or otherwise. In 1994 the IRC directed that unions and employer organisations should agree on a redundancy clause which could be inserted into certain NSW state awards.<sup>6</sup>
34. The majority of NSW awards now include Termination Change and Redundancy (TCR) clauses which, amongst other matters, require the employer to notify and discuss proposed changes with affected employees and their union, and prescribe the following notice:

Period of continuous Service	Period of Notice
Less than one year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

35. In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice. Payment in lieu of the prescribed notice shall be made to the employee if the appropriate notice period is not given. Most NSW award TCR clauses also provide for employers to provide employees with three months notice of termination due to technological change.

<sup>6</sup> Re application for redundancy awards [1994 AILR 301]

36. Most NSW awards provide eligible employees with an entitlement to redundancy pay which is reflected in Schedule 1 of the Regulations to the *Employment Protection Act 1982*.<sup>7</sup>

37. If an employee is covered by a State award that contains a TCR clause, the employer is exempt from the provisions of the *Employment Protection Act 1982* (discussed further below).

## **Hours of Work – Reasonable Hours Test Case**

38. A Full Bench of the Australian Industrial Relations Commission handed down its decision in the *Reasonable Hours Test Case*<sup>8</sup> on 23 July 2002, awarding a provision granting employees a right to refuse unreasonable overtime.

39. While the test case provision recognises the right of an employer to direct an employee to work 'reasonable' overtime, this is subject to the employee's right to refuse overtime that is unreasonable, having regard to the following factors:

- any risk to employee health and safety
- the employee's personal circumstances including any family responsibilities
- the needs of the workplace or enterprise
- the notice (if any) given by both the employer of the overtime and by the employee of their intention to refuse it, and
- any other relevant matter.

40. The Full Bench of the NSW IRC was satisfied the Australian Industrial Relations Commission's decision was a 'National Decision' as defined in the IR Act and was therefore required to consider its terms.<sup>9</sup>

41. The NSW IRC handed down similar provisions but also incorporated a reference to 'carer' responsibilities in order to achieve conformity with anti-discrimination clauses prevalent in NSW awards and enterprise agreements.

42. The Full Bench determined the proposed clause should be inserted upon application into awards.

## **1.2 NSW Community Standards in Legislation**

43. As indicated above, NSW community standards primarily reside in awards, however some standards are to be found in general industrial legislation, or specific purpose legislation. This sub-section sets out the relevant NSW legislated minima.

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<sup>7</sup> See para 58 of this submission re *Employment Protection Act 1982*

<sup>8</sup> State Working Hours Case 2003 [2003] NSWIRComm 86

<sup>9</sup> See ss48 and 50 of Industrial Relations Act 1996

## Annual Holidays Act 1944

44. The *Annual Holidays Act 1944* (the AH Act) is the principal statutory source of annual leave for employees working in the NSW industrial relations system. It applies to all employees engaged on a full time or part time basis, and to a limited extent, casual employees.
45. Pursuant to Schedule 8, clause 34 to the *Workplace Relations Act 1996*, the conditions set by the AH Act are currently conditions contained in NAPSAs applicable to almost all NSW employees employed by a constitutional corporation. They provide enhanced conditions over the conditions provided by Part 7 of the *Workplace Relations Act* (for instance as to the definition of 'ordinary pay' for the calculation of annual leave pay). In making a modern award the Commission would accordingly need to consider carefully the conditions contained in the AH Act to ensure that employees are not disadvantaged.
46. A full time or part time worker is entitled to four weeks annual holiday for each completed year of employment with an employer. A casual employee is effectively entitled to a payment in lieu of the leave entitlement determined on the basis of one-twelfth of the worker's ordinary pay for each hour worked (s 4(3)).
47. An employer may direct the worker to take annual leave in one or two consecutive periods, or up to four separate periods by agreement. An employer must give a worker their annual leave within a period of six months from the anniversary entitlement date unless the Industrial Registrar has granted, on application by the employer a postponement of the taking of the leave (s3(4)). A worker may also take annual holiday in advance of the entitlement date, but only with the agreement of the employer.
48. For employees mainly or wholly remunerated for their normal weekly number of hours by an ordinary time rate of pay this holiday pay will include weekend penalties and shift loadings the worker would have earned if they had not been on an annual holiday. An employer must give the worker at least one month's notice of the leave commencement date and an employee must be paid their holiday pay in advance of the taking of annual leave (s 3(6)(a)). On termination of employment the employee must be paid their ordinary rate of pay for their accumulated untaken leave entitlement.
49. Under s 4A of the AH Act an employer may temporarily close their business once a year by giving one month's notice, as part of a scheduled 'annual close down'. If a worker does not have sufficient leave entitlements to cover the entire close down period, the balance of that period must be taken as leave without pay.

50. The legislative intention of the AH Act is clearly to afford a worker a paid break from their employment, accordingly the cashing out of an employee's annual leave entitlement is prohibited except upon termination of employment. The NSW Government submits that annual leave is taken to allow an employee a proper respite from the work environment and should not be cashed out.

51. Most NSW common rule awards contain annual leave provisions although many of them merely make reference to the AH Act. Where awards do contain substantive leave entitlements they will only exclude the statutory provisions where the award gives workers an entitlement to annual leave benefits that is more favourable than the corresponding leave entitlements conferred by the AH Act.<sup>10</sup>

### **Long Service Leave Act 1955**

52. The *Long Service Leave Act 1955* sets out minimum provisions for long service leave. The statute operates with respect to all eligible workers in NSW, including (since 1985) casual employees with continuous service as defined. The leave entitlement is expressed in months, with a month defined as four and one-third weeks.

53. A worker is entitled to two months paid long service leave after ten years of service with an employer and for each additional five years of service a worker is entitled to an additional one month. In the case of a worker who has completed ten years but less than fifteen years, the worker is entitled to a proportionate amount on the basis of three months for fifteen years of service

54. Where a worker has completed five years of service (but less than ten years), the worker is entitled to a pro rata payment on the basis of two months for ten years of service in the following circumstances as per s4(2)(a)(iii):

- whose services are terminated by the employer for any reason other than the worker's serious and wilful misconduct,
- or by the worker on account of illness, incapacity or domestic or other pressing necessity,
- or by reason of the death of the worker.

55. A worker is entitled to long service leave on ordinary pay as defined in s3 of the Act. Ordinary pay excludes shiftwork, other penalty rates and overtime but may include bonuses and commissions received by the worker. Cashing-out of long service leave is prohibited except upon termination.

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<sup>10</sup> For example see clause 23 of the Private Hospital Industry Nurses' (State) Award

56. The NSW jurisdiction also has specific long service leave provisions for the building industry that recognises portability of employment (*Building and Construction Industry Long Service Payments Act 1986*).

57. The NSW Government recognises that each of the States and Territories will work with the federal government to achieve harmonised national long service leave provisions. In the interim, the NSW Government submits that it is essential to maintain existing long service leave provisions.

## **Employment Protection Act 1982**

58. The *Employment Protection Act 1982* and its Regulations provide an obligation upon employers to notify the NSW Industrial Registrar that an employee is to be or has been terminated. However, employers are not required to notify the Registrar where certain exemptions can be claimed which include the following:

- the employer employs less than 15 employees
- the employee has been employed for less than 12 months
- the employee is not covered by a New South Wales State Award or agreement
- the employee is a casual worker.

59. Where the termination does not fall under one of the exemptions the Industrial Registrar should be notified in accordance with ss 7 or 8 of the Act so that it may review the circumstances and make an appropriate order in line with the severance payment prescribed by the regulations.

60. The *Employment Protection Regulation 2001* (Schedule 1) provides for severance payments based on the following scales:

Years of Service	Under 45 Years	45 Years of Ages & Over
Less than 1 year	Nil	Nil
1 year and less than 2 years	4 weeks	5 weeks
2 years and less than 3 years	7 weeks	8.75 weeks
3 years and less than 4 years	10 weeks	12.5 weeks
4 years and less than 5 years	12 weeks	15 weeks
5 years and less than 6 years	14 weeks	17.5 weeks
6 years and over	16 weeks	20 weeks

61. Where an employee is 45 years old or over the scale provides an additional 25 per cent entitlement.

62. If an employee is covered by a State award that does not contain redundancy provisions, the employer must apply the provisions of the *Employment Protection Act 1982*.

## Industrial Relations Act 1996

63. Chapter 2, Pt 4, Divisions 1 & 2 provides for parental leave for all employees except for irregular casuals and seasonal employees. These Divisions provide detailed prescriptions of eligibility, entitlements and obligations.
64. Chapter 2, Pt 4 Div 4B, provides for leave for victims of crime, and prescribes eligibility, entitlements and obligations in detail.
65. Chapter 2, Pt 5 provides for part-time work agreements which allows employees and employers to contract out of an award or agreement in relation to part time work. The Division also provides for a State Decision which, inter alia, sets minimum standards (s79(3)), and makes some prescriptions in relation to additional hours of work, leave and replacement employees (ss80-82). This Decision was made in 1998<sup>11</sup>. Some of the matters in the Decision were revisited in the *Secure Employment Test Case*, but the Commission declined to make any change to the 1998 decision<sup>12</sup>.
66. Many NSW common rule awards prescribe for the payment of superannuation guarantee contributions to a nominated industry fund (or funds) although in some instances choice of fund is permitted to any complying fund. However under the IR Act, superannuation choice is available to workers under NSW awards. Section 124, provides that despite the provisions of an industrial instrument, contributions may be made to a complying superannuation fund nominated by the employee and approved by the employer.
67. The preceding material submitted by the NSW Government is intended to assist the Commission in its deliberations by outlining existing NSW legislation and community standards. The Award Modernisation process should not disadvantage employees by undermining these existing standards.

### **1.3 Why specific NSW Award provisions should be preserved**

69. As noted above at para 8, awards are the primary means of setting fair and just conditions in the NSW industrial relations jurisdiction. The common rule nature of NSW awards ensures that they set the industry standard deployed by all industrial parties within the scope of the award. The broad scope of matters capable of being regulated by NSW awards means that the NSW awards in priority industries, contain a large range of matters above and beyond the community standards described in the previous section.

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<sup>11</sup> *State Part-Time Work Case* [1998] NSWIRComm 142 (26 March 1998)

<sup>12</sup> *Secure Employment Test Case* [2006] NSWIRComm 38 (30 March 2006)

70. Given the nature of the NSW award-making process, these provisions have been subject to extensive processes of evidence, submissions, testing and deliberation by the IRC, the parties, and other interested bodies prior to their inclusion in the relevant award. They have become an accepted and necessary part of the machinery of regulating the industry and should therefore be respected as such by the award modernisation process.
71. The NSW Government submits that protections provided to workers under existing NSW award provisions should not be undermined by the Award Modernisation process.
72. In support of this contention, a number of observations should be made. Firstly, most such award provisions demonstrate that, characteristic of State awards, both the awards themselves and the respective clauses under consideration have a long history. This suggests that these awards and provisions are both durable and relevant.
73. In addition, most of these clauses have seldom been the subject of applications for variation, have remained in the respective instruments over a very long time and more often than not, deal with matters which are of some practical real significance to the employment of persons in the respective industries.
74. It will be noted that, save for test case provisions, many such provisions are not uniform although they may deal with similar subject matters. They arise at different times in different industries. When combined with the fact that the provisions were inserted by consent, it is reasonable to conclude that the provisions have a particular resonance in the industry or occupational area in which the award operates. Despite their longevity, these provisions plainly have a practical relevance to the particular industries and have arisen from enterprise bargaining within those industry sectors. That bargaining process, however, is consistent with the operation of the New South Wales system. Many such clauses would have been the subject of an application by a party or parties and often times the subject of quite extensive negotiation and conciliation processes before the IRC before an agreement is reached which resulted in a consent award.
75. It should also be remembered that the IRC reviews awards at regular intervals. That review is undertaken under s 19 of the IR Act. That section sets out the factors the IRC must have regard to in reviewing the award. Furthermore, the IRC has given various decisions over time elaborating upon the factors relevant to the review of the awards. Most NSW awards, and therefore the provisions which they contain, have been the subject of many reviews since the inception of s 19. That has a real significance at two levels. Firstly, in terms of the New South Wales criteria, these are relevant and ongoing provisions. Secondly, it demonstrates that the clauses have a vitality in that they are seen to be

clauses that are not obsolete and which satisfy the criteria set out in s 19. It is equally relevant that the parties have actively participated in those review processes and the clauses have, nonetheless, survived.

76. It is the NSW Government's submission that the *Workplace Relations Act* provides the Commission with ample scope to retain a wide range of NSW award provisions. Section 576J(2) of the *Workplace Relations Act* provides the Commission with a broad discretion to include 'terms about any other matter specified in the award modernisation request to which the modern award relates' among the terms of the modern award. Further, modern awards (together with the NES) '...must provide a fair minimum safety net of enforceable terms and conditions for employees<sup>13</sup>, and the Request provides that the creation of modern awards is not intended to disadvantage employers or employees.<sup>14</sup>

77. Further, the Request provides that 'a modern award may include industry-specific detail about matters in the NES'<sup>15</sup>, and that 'a modern award may supplement the NES where the Commission considers it necessary to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to the terms of this request and the existing award provisions (including under NAPSAs) for those employees..<sup>16</sup>

78. On this basis, the NSW Government submits that the full range of conditions in the relevant NSW awards be included in the modern industry award(s). With regard to the Commission's obligation to remove state-based differences<sup>17</sup>, the NSW Government reiterates its earlier submission that '..dealing with issues raised by differing State community standards would be most appropriately dealt with in the medium term, having regard to the five year transition period provided for by s576T(2)...'<sup>18</sup>.

#### **1.4 Maintaining the Relevance of Modern Awards**

79. In our initial submission regarding the award modernisation process the NSW Government urged the Commission to 'be cognisant of the need to make awards as relevant and contemporary as possible'<sup>19</sup>. This point was intended to be made in the broadest possible sense, having regard to the fact that many matters unforeseen at the time of making an award may later become sufficiently important to the parties to

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<sup>13</sup> WR Act s576(2)(b)

<sup>14</sup> Consolidated Ministerial Request paras 2(c) & (d)

<sup>15</sup> Consolidated Ministerial Request para 31

<sup>16</sup> Consolidated Ministerial Request para 32

<sup>17</sup> Workplace Relations Act, s576T.

<sup>18</sup> NSW Govt Submission to the AIRC Award Modernisation para 142.

<sup>19</sup> NSW Govt Submission to the AIRC Award Modernisation para 173.

prompt their inclusion in the relevant award. While the extent to which modern awards can adapt in the future to changes depends largely on future amendments to the *Workplace Relations Act*, the following submissions are nevertheless relevant.

80. As it stands, there appear to be a number of matters of increasing public and industrial importance which may be appropriately addressed by modern awards. Indeed, some of these matters are the subject of current Commonwealth Government review processes and it may be reasonably expected that these reviews will report prior to the effective date of modern awards on 1 January 2010.
81. The Productivity Commission is currently undertaking an Inquiry into improved support for parents of newborn children and is required to report its findings by February 2009. The Terms of Reference of the Inquiry require the Productivity Commission to identify paid maternity, paternity and parental leave models that could be used in the Australian context.
82. Depending on the administrative requirements of any potential paid parental scheme, modern awards will need to be responsive and flexible enough to deal with industry specific implementation issues.
83. The Commonwealth government has also initiated a number of concurrent reviews into 457 and other temporary working visas, to strengthen the integrity of these visa programs.
84. Outcomes of these reviews, particularly in relation to wages and conditions of employment will have significant industrial relations implications. Modern awards will need to be capable of accommodating and/or incorporating review outcomes with industrial relations implications as well as be responsive to future federal government policy in this growth area.
85. The potential consequences of measures designed to mitigate climate change appear to be far-reaching. Modern awards will need to be capable of being responsive to future workforce needs and changes in relation to climate change policies.
86. Changes in industry structures and organisation, occupations, skills, job design, production methods and technology, will require a flexible and adaptable system of awards. In particular, modern awards will need to accommodate new industries and classifications for climate change skills and occupations and re-evaluate existing occupational classifications.
87. The House of Representatives Employment and Workplace Relations Committee is currently conducting an inquiry into pay equity and other causes of potential disadvantage in relation to women's participation in the workforce.

88. The Terms of Reference of the Inquiry require the Committee to examine, among other matters, the adequacy of recent and current equal remuneration provisions in state and federal workplace relations legislation and the need for further legislative reform to address pay equity in Australia.

89. It is clear that the terms of modern awards and the proposed Forward with Fairness substantive legislation may ultimately reflect the recommendations of the Inquiry to the extent that they are adopted by the Commonwealth. The proposed Fair Work Australia will, in particular, need to have the capacity and flexibility to review and vary modern awards to ensure they facilitate equal opportunities and pay equity outcomes for women in their employment.

### **1.5 Support for training provisions as existing NSW standards**

90. In accordance with sections 576B (2)(a) and (b) of the *Workplace Relations Act*, the Commission should approach the award modernisation process as an opportunity to use the award system to promote training and skills development to meet economic needs. Skill based classifications and other award conditions provide structures for employers that place a relative value on the skills in the workplace and remuneration incentives for employees to up skill.

91. In creating modern awards the Commission has an opportunity to maintain training related provisions to improve the quality of vocational education and training (VET) outcomes. Existing provisions in federal pre-reform awards and NAPSAs that facilitate VET for apprentices and trainees or more broadly encourage skill development among non-apprentice and trainee employees in NSW include:

- higher wage rates for adult apprentices
- allowances paid to apprentices
- reimbursement of course costs
- paid and unpaid leave to attend training and examinations
- reimbursement for excessive travel costs to attend off-the-job training
- restrictions on overtime for apprentices
- requirement for apprentices to be supervised by qualified tradespeople
- caps on the number of trainees and apprentices that can be supervised by qualified tradesperson
- a higher duties allowance for suitably qualified workplace trainers
- prohibitions on using apprentices to perform unskilled work.

92. Traineeships are covered by a wide range of federal and state awards with trainees in the NSW system covered by some cross-industry awards as well as industry specific training wage awards such as those dealing with clerical and retail employees. The principal cross-industry awards are the *Training Wage (State) Award 2002* or the *National Training Wage Award 2000*.

93. The NSW Government submits that the Commission should:

- support the inclusion in modern awards of wage and classification structures that create skill based career paths linked to the national training framework and the Australian Qualifications Framework
- support the inclusion in modern awards of a comprehensive range of NSW award provisions relating to the employment of apprentices and trainees (including school-based), dealing with wages, allowances, reimbursements, hours, and the quality of on-the-job training (as listed above) and consider apprenticeship classifications linked to competency based progression
- take the broadest possible approach to including provisions that support training and skill development as allowable matters in modern awards. This approach should be taken irrespective of the fact that according to the terms of s576J, 'training' is not specified to be an allowable matter
- not disperse training provisions throughout modern awards but rather take the approach of bringing relevant training clauses together in the one section of a modern award to make the importance of training provisions clear and their meaning easily interpreted.

## Conclusion

94. As was pointed out in the NSW Government's first submission:

community standards ... have been (the) subject (of) extensive processes of evidence, submissions, testing and deliberation by the Industrial Relations Commission of NSW, the parties, and other interested bodies.<sup>20</sup>

95. Whilst making legislation is subject to a different process, the legislated minima described above have been the subject of detailed parliamentary scrutiny and remain in place many decades after their original passage.

96. While these conditions are now contained in NAPSAs, they are nonetheless currently enjoyed by the employees subject to those

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<sup>20</sup> NSW Govt Submission to the AIRC Award Modernisation , para 141

instruments, and the subject employers are obliged to deliver those conditions.

97. In making modern awards, the Commission should therefore ensure that these important minimum conditions are not lost, and that these awards should provide outcomes for NSW employees at least as beneficial as current State provisions.

## **Part 2 – Comparison of provisions of NSW Awards with NES and allowable award matters**

98. Attached to this section is a table that identifies known relevant NSW State awards (including NSW State Awards that the Commission has not previously identified as relevant). The table indicates whether clauses that can be dealt with under the National Employment Standards or as matters that can be contained in an award pursuant to s576J are to be found in those awards. This table is intended to assist the Commission, when making a modern award, to cross-check whether the relevant NSW State awards contain clauses in respect of each subject, on the submitted basis that in each case the Commission would then review such clauses carefully in order to prevent any reduction in existing conditions.

<b>Hospitality Industry: NSW State Awards</b>	<b>NSW award code no.</b>	<b>Parties to NSW award</b>	<b>Effective date of wages clause of NSW award</b>	<b>Date of s.19 review of NSW award</b>
<b>Catering Industry</b>				
Caterers Employees (State) Award	090	Employer: ABI, EF, R&CA, AIG Employee: LHMU	18/09/2007	3/10/2007
<b>Liquor and Accommodation Industry</b>				
Club Employees (State) Award	140	Employer: ClubsNSW Employee: LHMU	03/08/2007	3/12/2007
Club Industry (Variety Artists)(State) Award 2001	585	Employer: ClubsNSW Employee: MEAA	23/11/2004	14/01/2008
Club Managers' (State) Award 2006	141	Employer: EF, ClubsNSW, Employee: Club Managers Assoc.	4/01/2007	15/11/2005 (new award)
Hotel Employees (State) Award	384	Employer: EF, AHA, R&CA Employee: LHMU	30/08/2007	14/01/2008
Motels, Accommodation and Resorts (State) Award	550	Employer: ABI, EF, CCER, AIG, HMAA Employee: LHMU	30/10/2007	20/11/2007
<b>Restaurants</b>				
Canteen Workers (State) Award	080	Employer: ABI, EF, AIG, R&CA Employee: LHMU	07/09/2007	03/10/2007
Restaurant, &c., Employees' Retail Shops (State) Award	576	Employer: EF, ARA, Employee: LHMU, SDA,	04/08/2007	16/04/2004
Restaurant, &c., Employees' (State) Award	577	Employer: ABI, EF, AIG, R&CA Employee: LHMU	24/08/2007	03/10/2007

Key:

ABI	Australian Business Industrial
AHA	Australian Hotels Association (NSW)
AIG	Australian Industry Group
CCER	Catholic Commission for Employment Relations
ClubsNSW	The Registered Clubs Association of New South Wales
EF	Employers First
HMAA	The Hotel, Motel and Accommodation Association
LHMU	Liquor, Hospitality and Miscellaneous Union, New South Wales Branch
R&CA	Restaurant and Catering Industry Association of New South Wales
SDA	Shop, Distributive and Allied Employees' Association, New South Wales

<b>HOSPITALITY INDUSTRY:</b>		<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>
<b>National Employment Standard (NES):</b>		<b>Caterers Employees (State) 090</b>	<b>Club Employees (State) 140</b>	<b>Club Industry Variety Artists (State) Award 2001 585</b>
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	N
PARENTAL LEAVE		Y	Y	N
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	N
COMMUNITY SERVICE LEAVE	Jury Service	Y	Y	N
	Emergency Leave	N	N	N
LONG SERVICE LEAVE		N	Y	N
PUBLIC HOLIDAYS		Y	Y	N
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	N
	Redundancy pay	Y	Y	N
FAIR WORK INFORMATION STATEMENT		N	N	N
<b>Allowable Award Matters:</b>				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	Y	Y	Y
	Apprenticeships/ traineeships	Y	Y	N
TYPE of WORK PERFORMED		Y	Y	N

ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	Y	N
SUPERANNUATION		N	Y	Y
CONSULTATION, Representation & <b>Dispute settling procedures</b>		Y	Y	Y
<b>Specific Condition Based NSW Awards in Hospitality Industry:</b>				

**KEY:** Y: where the NES/allowable award matter appears within the NSW award  
N: where the NES/allowable award matter does not appear within the NSW award

<b>HOSPITALITY INDUSTRY:</b>		<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>
<b>National Employment Standard (NES):</b>		<b>Club Managers' (State) 141</b>	<b>Hotel Employees (State) 384</b>	<b>Motels, Accommodation and Resorts (State) 550</b>
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	Y
PARENTAL LEAVE		Y	Y	Y
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	Y
COMMUNITY SERVICE LEAVE	Jury Service	Y	N	Y
	Emergency Leave	Y	N	N
LONG SERVICE LEAVE		Y	Y	N
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	Y	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
<b>Allowable Award Matters:</b>				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	N	Y	Y
	Apprenticeships/ traineeships	N	Y	Y
TYPE of WORK PERFORMED		Y	Y	Y
ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y

OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	N	Y
SUPERANNUATION		Y	N	Y
CONSULTATION, Representation & <b>Dispute settling procedures</b>		Y	Y	Y
<b>Specific Condition Based NSW Awards in Hospitality Industry:</b>		Training Wage (State) Award		

**KEY:** Y: where the NES/allowable award matter appears within the NSW award  
N: where the NES/allowable award matter does not appear within the NSW award

<b>HOSPITALITY INDUSTRY:</b>		<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>	<b>NSW AWARD: incidence of NES/allowable matter</b>
<b>National Employment Standard (NES):</b>		<b>Canteen Workers (State) 080</b>	<b>Restaurant, &amp;c., Employees' Retail Shops (State) 576</b>	<b>Restaurants, &amp;c., Employees (State) 577</b>
MAXIMUM WEEKLY HOURS		Y	Y	Y
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	Y
PARENTAL LEAVE		Y	Y	Y
ANNUAL LEAVE		Y	Y	Y
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	Y
COMMUNITY SERVICE LEAVE	Jury Service	Y	Y	Y
	Emergency Leave	N	N	N
LONG SERVICE LEAVE		N	Y	N
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	Y	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
<b>Allowable Award Matters:</b>				
MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	Y	N	Y
	Apprenticeships/ traineeships	Y	Y	Y
TYPE of WORK PERFORMED		Y	Y	Y

ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave	Annual Leave	Y	Y	Y
	Leave Loading	Y	Y	Y
SUPERANNUATION		Y	N	N
CONSULTATION, Representation & <b>Dispute settling procedures</b>		Y	Y	Y
<b>Specific Condition Based NSW Awards in Hospitality Industry:</b>			Training Wage (State) Award	

**KEY:** Y: where the NES/allowable award matter appears within the NSW award  
N: where the NES/allowable award matter does not appear within the NSW award

## ***NSW Project/Enterprise Awards within Hospitality Industry***

99. The NSW State Awards listed below were included in the Commission's first Award Modernisation Decision handed down on 20 June 2008 as NSW State Awards relevant to this industry. They are, however, Project/Enterprise Awards which did not become NAPSAs.
100. It should be noted that the Industrial Relations Amendment Act 2006 (NSW) deemed existing consent or enterprise awards to be enterprise agreements within the meaning of the Industrial Relations Act 1996 (NSW), with effect immediately prior to the commencement of Workplace Relations Amendment (Workchoices) Act 200521.
101. On commencement of that Act, therefore they were converted into Preserved State Agreements.

ALHMWU and GEMA Catering Vendors (State) Award

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<sup>21</sup> See NSW Government, Supplementary Submission to the AIRC- Award Modernisation June 2008, paras 2-10.

### **Part 3 – NSW Award Conditions**

102. NSW State awards relevant to this industry have a significant history, indicating their durability and ongoing relevance.
103. Tables have been prepared in respect of certain awards in the NSW State system of particular significance in this industry, dealing with some key clauses in those awards.
104. The tables attached in this section record the provenance and currency of those award provisions. The tables demonstrate that these clauses have been seldom the subject of applications for variation, have remained in the respective instruments over a very long time and may be thereby presumed to have a relevance to the parties in the industry not only because of those facts, but because the provisions themselves, more often than not, deal with matters which are of some practical real significance to the employment of persons in the respective industries.
105. In the NSW Government's submission, the provisions set out in the attached tables should be closely considered in the award modernisation process with a view to replicating them as far as possible to ensure that no disadvantage to employers or employees would result in the making of a modern award.
106. See tables attached

## **Industry Analysis Prepared for the NSW Office of Industrial Relations**

107. The following analysis was prepared by the Workplace Research Centre at the request of the NSW Office of Industrial Relations to contribute to submissions to the Award Modernisation process currently being conducted by the Commission. It relates to a number of the fourteen priority industries and occupations that are under review, including the hospitality industry.
108. The analysis provides valuable information on the working lives of Australians in this industry including working conditions, the labour contract, earnings and hours worked and attitudes to work. The survey collected data on a range of topics including workplace profile, methods of setting pay and conditions, wages and entitlements and managers' attitudes.
109. It is expected the data at Appendix A will be a valuable source of information and assist the Commission in its deliberations during the Award Modernisation process.

## Appendix A

# Industry Analysis: *Hospitality*

Analysis prepared for the  
NSW Office of Industrial Relations

Workplace Research Centre,  
The University of Sydney  
July 2008

## Table of Contents

1. Introduction	33
Analysis Groups – Australia at Work .....	
.....	
.....	
33	
Analysis Groups – ESWIRS .....	
.....	
.....	
.....	33
2. Hospitality	35
Appendix A: Tables for all Australian employees	43
Appendix B: Sample Counts	46

## Tables and Figures

Table 2.1: Sex by Hospitality Industry, 2007 .....	35
Table 2.2: Age by Hospitality Industry, 2007 .....	35
Table 2.3: Form of employment by Hospitality Industry, 2007 .....	35
Table 2.4: Employment status by sex, Hospitality Industry, 2007 .....	36
Table 2.5: Hours of operation each week by Recreation and Personal Services Workplaces, 2006, per cent.....	37
Table 2.6: Length of most common shift by Recreation and Personal Services Workplaces, 2006, per cent.....	37
Table 2.7: Skill level by Hospitality Industry, 2007 .....	37
Table 2.8: Occupation by Hospitality Industry,2007 .....	38
Table 2.9: Non-managerial employees' average hours and hourly pay by Hospitality Industry, 2007 .....	38
Table 2.10: Workplace Size by Hospitality Industry, 2007 .....	39
Table 2.11: Union membership and workplace presence, Hospitality Industry, 2007 .....	39
Table 2.12: Self-reported Agreement Type by Hospitality Industry, 2007.....	40
Table 2.13: Award plays a role in pay and conditions by Hospitality Industry, 2007 .....	40
Table 2.14: Dominant agreement type (≥60% of workplaces) by Recreation and Personal Services Workplaces, 2006, per cent.....	41
Table 2.15: Managers' preferred method of setting wages and conditions by Recreation and Personal Services Workplaces, 2006, per cent.....	41

## Introduction

This analysis was prepared at the request of the NSW Office of Industrial Relations to contribute to their submissions to the Award modernisation process currently being conducted by the Australian Industrial Relations Commission. This analysis relates to industries and occupations that are under review including hospitality.

The research questions driving the analysis are:

- What are the employment and industrial relations characteristics of employees who will be affected by the award modernisation process?
- In particular, what are the industrial arrangements of employees working in hospitality?

This analysis draws on data from two sources: the Australia at Work study and the Eastern Seaboard Workplace and Industrial Relations Survey (ESWIRS) of Queensland, New South Wales and Victoria. Australia at Work is a survey of 8,341 people who were in the labour force in March 2006 (prior to the introduction of *WorkChoices*). It provides valuable information on the working lives of Australians from the respondent's perspective including working conditions, the labour contract, earnings and hours worked, attitudes to work and stage in the life course. This analysis uses weighted data on the employment situation in 2007. ESWIRS is a telephone survey of 1,071 workplace managers that was conducted in 2006. The survey collected data on a range of topics including workplace profile, methods of setting pay and conditions, wages and entitlements and managers' attitudes.

### ***Analysis Groups – Australia at Work***

Hospitality includes ANZSIC codes 4400 to 4530, the group labelled 'Accommodation and Food Services'. For the purposes of the analysis this group has been disaggregated into the two sectors which make up hospitality: ANZSIC group 4400 'Accommodation' and ANZSIC group 4500 'Food and Beverage Services'.

### ***Analysis Groups – ESWIRS***

The bulk of the analysis is conducted using the Australia at Work study due to the precise industry and occupational coding used in this study. The ESWIRS methodology is quite different to the Australia at Work methodology and as a result the data are not compatible. Where Australia at Work surveys individuals and is able to report on employee experiences, ESWIRS reports on workplaces. The respondents in ESWIRS are workplace managers who answer questions relating to their workplaces.

ESWIRS differs from Australia at Work in coding of industry. While Australia at Work uses the ANZSIC industry coding provided by the Australian Bureau of Statistics, ESWIRS uses Dun & Bradstreet coding. Due to the convention of the Dun & Bradstreet sampling frame, as well as the sample sizes in ESWIRS, industry analysis will be confined to recreational and personal services.

Recreation and personal services does not align wholly with the ANZSIC code of 'accommodation and food services'. Instead, as well as accommodation and food services, it also includes recreation and personal services such as museums, health clubs and drug and alcohol support, for some examples. Therefore, caution needs to be taken in comparing the results from Australia at Work and ESWIRS, as the hospitality, and recreation and personal services groups are not directly comparable.

Like the data from Australia at Work, the ESWIRS data set relies on the judgement of respondents. Accordingly, the data presented in the tables on dominant agreements may in some ways be considered more accurate than employees' knowledge of agreement types, but as it is based on personal understanding, rather than administrative data, it should not be considered an objective assessment of agreements in workplaces. Instead, it complements the data presented from Australia at Work on agreement types.

## Hospitality

The hospitality industry employs more than 400,000 people. Most employees (93 per cent) who are employed in hospitality work in the food and beverage sector which consists of cafes, restaurants and takeaway food services as well as pubs, clubs and bars. The accommodation sector only accounts for approximately 75,000 employees in the hospitality industry. There are more females than males in this industry (57 per cent compared to 43 per cent), Table 2.1. This is significantly higher than the proportion of females across the whole employee workforce, which is 48 per cent.

**Table 2.1: Sex by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Male	39	30,319	43	147,096	43	177,415
Female	61	46,976	57	191,453	57	238,429
Total	100	77,295	100	338,549	100	415,844

Source: Australia at Work, Wave 1

Like the retail industry, hospitality also has a young employee base. Three fifths (59 per cent) of hospitality industry employees are aged between 16 and 24 years, Table 2.2. However, this is particularly so for the food and beverage sector, with two-thirds of all their employees aged between 16 and 24 years. The accommodation industry has an older age profile that is more reflective of the age distribution of all employees in the Australian economy, with 22 per cent of employees aged under 25 years.

**Table 2.2: Age by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
16 – 19	2	1,207	40	135,603	33	136,810
20 – 24	20	15,591	27	90,515	26	106,105
25 – 34	17	12,918	11	38,380	12	51,299
35 – 44	29	22,141	11	37,081	14	59,223
45 – 54	25	19,095	8	26,334	11	45,428
55 +	7	5,245	2	5,956	3	11,201
Refused	1	1,097	1	4,681	1	5,778
Total	100	77,294	100	338,550	100	415,844

Source: Australia at Work, Wave 1

The majority (65 per cent) of people employed in hospitality are employed on a casual basis; and this is reflected in the food and beverage sector (69 per cent of employees are casual). The accommodation industry is equally represented by people employed on a permanent basis, as a casual basis. Employees in the hospitality industry are three times more likely to be employed on a casual basis compared to employees in the broader labour market (only 22 per cent of Australian employees are casual, see Appendix A Table 3).

**Table 2.3: Form of employment by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Permanent	50	38,276	28	93,653	32	131,929

Fixed term	1	1,097	3	11,423	3	12,520
Casual	49	37,921	69	233,473	65	271,394
Total	100	77,294	100	338,549	100	415,843

Source: Australia at Work, Wave 1

Part-time work is the predominant type of employment in the hospitality industry, Table 2.4. Overall, two-thirds of employees are employed on a part-time basis. However, this is the result of employment patterns in the food and beverage sector where more than three-quarters (73 per cent) of employees are part-time, rather than accommodation where less than half (43 per cent) of employees are employed on a part-time basis. Nevertheless, the rate of part-time employment is higher in both sectors than in the labour market where 34 per cent of all jobs are part-time. Part-time employment is higher among women than it is among men in hospitality, but the difference is not as great as it is for all employees (see Appendix A, Table 4).

**Table 2.4: Employment status by sex, Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
<i>Male</i>						
Part-time	25*	7,482	67	98,854	60	106,336
Full-time	75*	22,836	33	48,243	40	71,079
<i>Female</i>						
Part-time	54*	25,551	77	146,964	72	172,515
Full-time	46*	21,425	23	44,489	28	65,914
<i>All</i>						
Part-time	43	33,033	73	245,818	67	278,851
Full-time	57	44,262	27	92,731	33	136,993
Total	100	77,295	100	338,549	100	415,844

\*n<30

Source: Australia at Work, Wave 1

As expected, recreation and personal service workplaces have very different hours of operation relative to all workplaces, Table 2.5. These workplaces are three times as likely to be open 24 hours a day, 7 days a week (16 per cent compared to 5 per cent). This can be attributed to hotels and other forms of accommodation that make up the industry. However, there is also a significant proportion (47 per cent) of workplaces that are open between 57 and 167 hours each week. This is likely to be a result of food and beverage services that are open longer than 8 hours a day for 7 days a week. This highlights the extent to which unsociable working hours are prevalent in this industry.

**Table 2.5: Hours of operation each week by Recreation and Personal Services Workplaces, 2006, per cent**

	Recreation and personal services workplaces	All workplaces
Less than 40 hours per week	16	37
41 to 48 hours per week	7	15
49 to 56 hours per week	13	19
57 to 167 hours per week	47	23
168 hours per week (Open 24/7)	16	5
Total	100	100

Source: ESWIRS

The most common shift in recreation and personal service workplaces is under 8 hours (48 per cent), Table 2.6. Like the retail industry, the high proportion of split shifts and the young employee base could be attributing to this pattern. Long shifts in recreation and personal services workplaces are consistent with the national average (14 per cent compared to 16 per cent, respectively).

**Table 2.6: Length of most common shift by Recreation and Personal Services Workplaces, 2006, per cent**

	Recreation and personal services workplaces	All workplaces
Under 8 hours	48	28
8 to 10 hours	38	56
10 or more hours	14	16
Total	100	100

Source: ESWIRS

Hospitality employees are mostly in low-skilled occupations, with 72 per cent employed in the bottom two skill levels, Table 2.7. Similar proportions of employees are employed at this skill level in both the accommodation and food and beverage sectors. The accommodation sector has a larger proportion of employees in skill level two, which is most likely reflective of the larger proportion of managers employed in this industry (see Table 2.8). While the food and beverage sector has more employees in skill level 3. Compared with the broader labour market, the hospitality industry has a significantly higher proportion of employees in the lowest skill level, 42 per cent compared to 16 per cent of all employees (Appendix A, Table 5).

**Table 2.7: Skill level by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Level 1	3	2,080	1	3,859	1	5,939
Level 2	21	16,536	9	30,764	11	47,300
Level 3	9	6,557	17	56,924	15	63,481
Level 4	28	21,320	31	105,085	30	126,405
Level 5	40	30,801	42	141,916	42	172,717
Total	100	77,24	100	338,548	100	415,842

Source: Australia at Work, Wave 1

More than one-third (36 per cent) of employees in hospitality are classified as community and personal service workers, which includes hospitality workers, Table 2.8. Another quarter of employees are labourers and 14 per cent are technicians and

trades workers (which includes trade-qualified chefs). However, the occupational distributions are distinct in the accommodation and food and beverage sectors. The largest occupation in accommodation is labourers (32 per cent), followed by managers (22 per cent). In food and beverage services, the largest occupation is community and personal service workers (41 per cent), followed by labourers (24 per cent).

**Table 2.8: Occupation by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Managers	22	17,115	9	30,731	12	47,846
Professionals	0	0	1	1,654	0	1,654
Technicians and trades	5	3,825	17	56,207	14	60,032
Community & personal service	15	11,924	41	137,175	36	149,099
Clerical and administration	20	15,093	1	4,770	5	19,863
Sales workers	6	4,345	7	21,910	6	26,255
Machinery operators and drivers	0	271	2	6,147	0	6,418
Labourers	32	24,723	24	79,956	25	104,679
<i>Total</i>	100	77,296	100	338,550	100	415,846

Source: Australia at Work, Wave 1

On average, part-time hospitality employees tend to work shorter part-time hours, Table 2.9. This is particularly so for employees in food and beverage services who usually work, and are usually paid for, 16 hours per week on average. Overall, average full-time hours in hospitality are comparable to the wider labour market, at 43 hours per week. However, they are only paid for 41 hours per week on average.

The average hourly rates of hospitality workers, both full-time and part-time, are lower than the national average (see Appendix A, Table 7). Part-time food and beverage employees receive a lower hourly rate (\$14) compared their full-time counterparts (\$17).

**Table 2.9: Non-managerial employees' average hours and hourly pay by Hospitality Industry, 2007**

	Accommodation	Food & Beverage	Total Hospitality
	N	N	N
Part-time	33,033	244,607	277,640
Full-time	44,262	92,731	136,993
<i>Usual hours</i>	<i>Mean</i>	<i>Mean</i>	<i>Mean</i>
Part-time	23*	16	17
Full-time	41*	43	43
<i>Paid hours</i>			
Part-time	20*	16	17
Full-time	39*	42	41
<i>Average hourly rate</i>			
Part-time	\$18*	\$14	\$15
Full-time	\$18*	\$17	\$17

\* n<30

Source: Australia at Work, Wave 1

The majority of hospitality employees work in small to medium workplaces, Table 2.10, with nearly half (49 per cent) working in medium workplaces of 20 to 100

employees. This compares to 35 per cent of all employees who work in medium-sized workplaces. Food and beverage employees are more likely to be working in small workplaces (39 per cent).

**Table 2.10: Workplace Size by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Less than 20 employees	22	17,052	39	131,528	36	148,580
20 to 100 employees	49	37,525	49	162,278	49	199,803
More than 100 employees	29	22,447	12	40,882	15	63,329
<i>Total</i>	100	77,024	100	334,688	100	411,712

Source: Australia at Work, Wave 1

Union membership in the hospitality industry is significantly lower than in the rest of the labour force, Table 2.11. Only 6 per cent of hospitality employees are union members compared to 15 per cent of all private sector employees (Appendix A, Table 8). In this industry, for every union member there are two employees who want to join a union. And employees are three times as likely as all private sector employees to not know if they are a union member (6 per cent compared to 2 per cent). Union membership and desire to join one is significantly lower in the accommodation sector. In the food and beverage sector 15 per cent of employees want to join a union compared to 10 per cent of all private sector employees.

As union membership is low in hospitality it is expected that union presence in the workplace would be equally low. Indeed, only 18 per cent of hospitality employees report a union present in their workplace, compared with 30 per cent of all private sector employees. There is a low level of knowledge of union activity in the hospitality sector, as 20 per cent of employees did not know whether a union was represented in their workplace. This may be a result of the high proportion of young people in this industry, as it is established that young people have a relatively low level of knowledge about unions and union activity. Even though union membership is almost non-existent in the accommodation sector, 27 per cent of employees report a union being present in their workplace. The higher proportion of managers in this sector may go some way to explaining this, as this occupational group have a lower rate of union membership.

**Table 2.11: Union membership and workplace presence, Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
<i>Union membership</i>						
Union member	1	563	7	22,783	6	23,346
Unrepresented worker	7	5,688	15	50,091	13	55,779
Satisfied non-member	87	66,987	72	245,424	75	312,411
Don't know	5	4,057	6	20,252	6	24,309
<i>Union represented at the workplace</i>						
Yes	27	20,883	16	55,696	18	76,579
No	54	41,780	63	212,692	61	254,472
Don't know	19	14,632	21	70,161	20	84,793
<i>Total</i>	100	77,295	100	338,549	100	415,844

Source: Australia at Work, Wave 1

Table 2.12 displays the agreements in which employees believe their pay and conditions are set. There is a greater reliance on award arrangements in the hospitality industry. Nearly half (47 per cent) of all employees in the hospitality industry reported award or over-award arrangements. Collective enterprise agreements are relatively uncommon in hospitality, with only a total of 9 per cent of employees reporting these agreements, compared to 22 per cent of all employees. Individual agreement making is also less common. Young people are less likely to know what type of instrument governs their pay and conditions. In the hospitality industry, employees are twice as likely to report no agreement (10 per cent compared to 5 per cent of all employees) or not to know what agreement is in place (15 per cent compared to 8 per cent overall).

It has already been established that employees in accommodation services display some distinct characteristics to those in food and beverage services. This also applies to employees' reports of industrial instruments. The accommodation industry has three fifths (61 per cent) of employees reporting award based arrangements compared to only 47 per cent of food and beverage employees. More importantly, employees in the food and beverage sector are three times as likely, as accommodation employees, not to know what instrument they have. This is reflective of a higher proportion of older employees in accommodation.

**Table 2.12: Self-reported Agreement Type by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Award only	43	33,592	37	124,664	38	158,256
Over-award	18	14,095	10	33,037	11	47,132
Collective agreement w/ Union	4	2,945	2	7,697	3	10,642
Collective agreement w/o Union	4	2,870	6	19,141	5	22,011
Collective agreement DK Union	3	2,350	1	3,031	1	5,381
Individual common law	15	11,498	12	41,204	13	52,702
AWA	0	0	5	16,923	4	16,923
Other						
No agreement	8	6,334	10	34,380	10	40,714
Don't Know / Refused	5	3,609	17	58,472	15	62,081
Total	100	77,293	100	338,549	100	415,842

Source: Australia at Work, Wave 1

The majority (55 per cent) of employees in the hospitality industry say that an award plays a role in their pay and conditions, Table 2.13. Employees in the accommodation industry are much more likely to be aware of the role of the award, with 70 per cent reporting an award role and only 4 per cent who do not know. Compared to the food and beverage sector, where 51 per cent recognise an award role and 13 per cent do not know.

**Table 2.13: Award plays a role in pay and conditions by Hospitality Industry, 2007**

	Accommodation		Food & Beverage		Total Hospitality	
	%	N	%	N	%	N
Yes	70	53,915	51	174,141	55	228,056
No	26	19,944	36	121,720	34	141,664
Don't know / Refused	4	3,435	13	42,688	11	46,123
Total	100	77,294	100	338,549	100	415,843

Source: Australia at Work, Wave 1

Table 2.14 indicates that the majority (55 per cent) of workplaces in the recreation and personal services industry have awards or over-awards as the dominant agreement type. This is higher than the average of 45 per cent of workplaces. In particular, it is basic award conditions that are the most popular with managers in this industry (32 per cent compared to 15 per cent overall), while the workplaces relying on over-awards is less than the average (23 per cent compared to 31 per cent). Very few (5 per cent) recreation and personal services workplaces have collective agreements as the dominant agreement type. Considering that the recreation and personal services workforce tends to be younger, lower skilled and lower paid, it is surprising that roughly one-third (32 per cent) of managers report having individual agreements as the dominant instrument in their workplace.

**Table 2.14: Dominant agreement type (≥60% of workplaces) by Recreation and Personal Services Workplaces, 2006, per cent**

	Recreation and personal services workplaces	All workplaces
Award only	32	15
Over-award	23	31
Collective agreement	5	10
Individual agreements	32	29
No dominant agreement type in workplace	7	16
Total	100	100

Source: ESWIRS

Collective agreements are the least preferred method of setting wages and conditions by managers in the recreation and personal services industry, Table 2.15. However, the proportion of managers who have this preference (12 per cent) is higher than current practice (5 per cent). The most preferred method is individual agreements, with more than one third (36 per cent) of managers preferring this method; followed by over awards (25 per cent); and finally awards (19 per cent).

**Table 2.15: Managers' preferred method of setting wages and conditions by Recreation and Personal Services Workplaces, 2006, per cent**

	Recreation and personal services workplaces	All workplaces
Union collective agreements	6	6
Non-union collective agreements	6	5
Award rates of pay	19	13
Over-awards	25	25
Informal individual agreements	36	43
AWAs	9	7
Total	100	100

Source: ESWIRS

The preference for over-awards among recreation and personal services managers is similar to current practice, Tables 2.14 and 2.15. However, the proportion of managers who prefer basic award conditions is much lower than current practice (19 per cent compared to 32 per cent, respectively). Instead, there is a greater preference for individual agreements – in total 45 per cent of managers in this industry would

prefer these – with 36 per cent preferring informal arrangements and 9 per cent wanting AWAs for their employees.

## Appendix A: Tables for all Australian employees

**Table 1: Sex, All employees, 2007**

	%	N
Male	52	4,171,204
Female	48	9,793,842
Total	100	7,965,046

Source: Australia at Work, Wave 1

**Table 2: Age, All employees, 2007**

	%	N
16 – 19	8	621,388
20 – 24	13	1,025,870
25 – 34	18	1,419,187
35 – 44	30	2,359,354
45 – 54	24	1,906,744
55 +	7	583,323
Refused	1	49,180
Total	100	7,965,046

Source: Australia at Work, Wave 1

**Table 3: Form of Employment, All employees, 2007**

	%	N
Permanent	72	5,711,837
Fixed term	6	493,338
Casual	22	1,759,871
Total	100	7,965,046

Source: Australia at Work, Wave 1

**Table 4: Employment status by sex, All Employees, 2007**

	%	N
<i>Male</i>		
Part-time	17	725,004
Full-time	83	3,443,785
Refused	0	2,415
<i>Female</i>		
Part-time	53	2,012,033
Full-time	47	1,781,809
<i>All</i>		
Part-time	34	2,737,037
Full-time	66	5,225,594
Refused	0	2,415
Total	100	7,965,046

Source: Australia at Work, Wave 1

**Table 5: Skill level, All employees, 2007**

	%	N
Level 1	36	2,863,038

Level 2	11	862,046
Level 3	12	984,125
Level 4	24	1,923,084
Level 5	16	1,305,395
<i>Total</i>	100	7,937,688

Source: Australia at Work, Wave 1

**Table 6: Occupation, All employees, 2007**

	%	<i>N</i>
Managers	14	1,087,266
Professionals	25	1,978,291
Technicians and trades	12	917,992
Community and personal service workers	10	802,400
Clerical and administrative workers	17	1,318,817
Sales workers	10	797,811
Machinery operators and drivers	5	412,232
Labourers	8	623,975
<i>Total</i>	100	7,940,560

Source: Australia at Work, Wave 1

**Table 7: Hours and pay, All employees, 2007**

	Mean	<i>N</i>
Usual hours		
Part-time	20	2,318,426
Full-time	44	3,763,631
Paid hours		
Part-time	19	2,318,426
Full-time	41	3,763,631
Average hourly rate		
Part-time	21	2,318,426
Full-time	25	3,763,631

Source: Australia at Work, Wave 1

**Table 8: Union membership and workplace presence by sector, 2007**

	Private Sector		Public Sector		All Employees	
	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>
<i>Union membership</i>						
Union member	15	905,089	42	849,263	22	1,762,053
Unrepresented worker	10	581,562	11	227,185	10	822,911
Satisfied non-member	73	4,301,090	45	906,766	66	5,264,221
Don't know	2	89,966	1	25,101	1	115,862
<i>Union represented at the workplace</i>						
Yes	30	1,778,556	76	1,524,734	42	3,339,701
No	58	3,386,402	17	333,875	47	3,743,473
Don't know	12	712,749	7	149,706	11	881,872
Total	100	5,877,707	100		100	7,965,046

Source: Australia at Work, Wave 1

**Table 9: Self-reported Agreement Type, All employees, 2007**

	%	<i>N</i>
Award only	32	2,516,368
Over-award	9	730,124
Collective agreement w/ Union	14	1,114,035

Collective agreement w/o Union	6	461,117
Collective agreement DK Union	2	169,627
Individual common law	19	1,491,985
AWA	6	442,850
Other	0	17,066
No agreement	5	376,383
Don't Know / Refused	8	645,492
<b>Total</b>	<b>100</b>	<b>7,965,047</b>

Source: Australia at Work, Wave 1

**Table 10: Award plays a role in setting agreement, All employees, 2007**

	%	<i>N</i>
Yes	58	3,959,804
No	34	2,322,396
Don't know / Refused	8	571,095
<i>Total</i>	100	6,853,295

Source: Australia at Work, Wave 1

**Table 11: Workplace Size, All employees, 2007**

	%	<i>N</i>
Less than 20 employees	33	2,571,223
20 to 100 employees	35	2,736,169
More than 100 employees	32	2,513,191
<i>Total</i>	100	7,820,583

Source: Australia at Work, Wave 1

## Appendix B: Sample Counts

	Metal Manuf.	Transport & Machinery Manuf.	Total Metal Manuf.	Super-market	Recreation, Clothing & Dept Store	Total Retail	Accomm.	Food & Beverage	All Hospitality	Public Sector Clerks	Private Sector Clerks	Total Clerks
<b>Sex</b>												
Male	86	154	240	88	41	275	24	102	126	115	184	299
Female	20	35	55	110	116	371	37	157	194	207	522	729
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1028
<b>Age</b>												
16 – 19	5	17	22	63	44	152	2	107	109	8	30	38
20 – 24	7	14	21	43	49	147	12	61	73	28	117	145
25 – 34	28	41	69	22	24	100	9	30	39	61	129	190
35 – 44	34	59	93	39	13	127	18	29	47	107	217	324
45 – 54	22	49	71	26	22	92	16	23	39	97	149	246
55 +	9	9	18	4	4	26	3	6	9	21	54	75
Refused	1	0	1	1	1	0	1	3	4	0	10	10
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	696	1018
<b>Workplace Size</b>												
Less than 20	34	53	87	12	85	276	15	102	117	57	295	352
20 to 100	31	72	103	102	40	222	28	128	156	97	227	324
More than 100	40	62	102	78	28	137	17	26	43	161	177	338
<i>Total</i>	105	187	292	192	153	635	60	256	316	315	699	1,014
<b>Form of Employment</b>												
Permanent	97	169	266	100	57	338	29	73	102	270	531	801
Fixed term	2	3	5	4	2	12	1	8	9	31	33	64
Casual	7	17	24	94	98	296	31	178	209	21	142	163

<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1028
<b>Occupation</b>												
Managers	14	30	44	13	10	61	12	23	35	-	-	-
Professionals	8	29	37	3	0	24	0	2	2	-	-	-
Technicians and trades	30	68	98	9	1	31	3	44	47	-	-	-
Community & personal service workers	0	0	0	0	1	1	10	104	114	-	-	-
Clerical & administrative workers	11	29	40	10	12	53	10	5	15	322	706	1028
Sales workers	3	8	11	118	128	408	3	17	20	-	-	-
Machinery operators & drivers	24	15	39	11	2	23	1	5	6	-	-	-
Labourers	14	10	24	34	3	45	22	59	81	-	-	-
<i>Total</i>	104	189	293	198	157	646	61	259	320	322	706	1028
<b>Skill Level</b>												
Level 1	22	57	79	5	4	42	3	3	6	0	0	0
Level 2	6	16	22	11	8	57	10	24	34	82	131	213
Level 3	26	62	88	12	2	34	4	45	49	31	85	116
Level 4	36	43	79	33	18	114	17	81	98	183	455	638
Level 5	14	11	25	137	125	399	27	106	133	26	35	61
<i>Total</i>	104	189	293	198	157	646	61	259	320	322	706	1,028
<b>Usual &amp; Paid hours</b>												
Part-time	5	11	16	127	117	342	25	169	194	80	244	324
Full-time	76	129	205	45	22	190	19	46	65	213	376	589
<i>Total</i>	81	140	221	172	139	532	44	215	259	293	620	913
<b>Average hourly rate</b>												
Part-time	5	11	16	127	117	342	25	169	194	80	244	324
Full-time	76	129	205	45	22	190	19	46	65	213	376	589
<i>Total</i>	81	140	221	172	139	532	44	215	259	293	620	913

<b>Self-reported agreement type</b>												
Award only	18	38	56	75	57	232	27	93	120	118	191	309
Over-award	14	20	34	10	13	58	8	26	34	19	81	100
Collective agreement w/ Union	20	25	45	40	15	69	2	9	11	103	69	172
Collective agreement w/o Union	2	16	18	6	5	26	3	14	17	18	46	64
Collective agreement DK Union	4	2	6	6	3	18	2	3	5	15	18	33
Individual common law	21	52	73	9	9	37	0	0	0	0	0	0
AWA	11	16	27	19	16	86	0	16	16	21	45	66
Other	1	0	1	0	0	1	6	29	38	14	161	175
No agreement	4	5	9	12	12	38	7	26	33	3	39	42
Don't Know / Refused	11	15	26	21	27	81	3	41	44	11	55	66
Total	106	188	295	198	157	646	61	257	318	322	705	1027
<b>Award Role</b>												
Yes	52	89	141	114	92	365	40	135	175	221	356	577
No	47	89	136	57	47	209	17	91	108	75	294	369
Don't know / Ref	7	11	18	27	18	72	4	33	37	26	56	82
<i>Total</i>	106	189	295	198	157	646	61	259	320	322	706	1,028

## Club Employees (State) Award

Clause No	Clause Title	Date of Origin & Insertion	Commission Member	Arbitrated or Consent	Remarks
3	Mixed Functions	108 IG 803, 13 March 1953, 417 of 1951	Conciliation Committee	-	Where an employee is required to perform duties at a higher classification level, the employee shall be paid at that higher classification. For less than two hours for the time actually worked. For more than two hours for the entire shift. For duties at a lower classification level no deduction shall be made.
4	Payment of Wages	273 of 1918, 6 Dec 1918, 15 IG 105	Conciliation Committee	-	This clause provides for time and method for the payment of wages and payment of wages on dismissal.
5	Time and Wages Records	24 May 1968, 170 IG 331, 855 of 1967	Conciliation Committee	-	Clause established that time and wages book or sheets and/or Bundy clock shall be provided and kept by each employer. Employees shall enter start and finish times and employer will record the time worked and the amount of wages and overtime paid each week and the date of payment. Employees shall have access to the book and the union may inspect it.
6	Structural Efficiency	13 December 1990, 268 IG 60, Matter No 755 of 1990	Maidment J	-	Employees shall carry out all functions within their capacity to perform, including duties of a lower grade where this is reasonably required.
11	Voluntary Exemption Agreements	6 May 1994, 1096 of 1993, 282 IG 1258	Marks J	Consent	Clause inserted to allow an employer and an individual full time weekly employee to freely enter into a written Voluntary Exemption Agreement. Prior to negotiations the employer must advise the union of its intention to negotiate, and the union may participate in the negotiation. Agreement can be reached on matters included in the Hours, Overtime, Saturday and Sunday Rates, and Rostered Days Off clauses, provided minimum standards are met.

## Club Employees (State) Award

19	Agreement Forms	18 February 1988, 25 of 1988, 250 IG 310.	McMahon CC	-	Clause originally titled form of consent, later became agreement forms in the award review 2 July 1999. Clause provides that should an employee be engaged in pattern of hours outside ordinary an agreement in writing should be formed and signed by the employer and employee.
20	Board and Lodgings	6 December 1918, 15 IG 105, 273 of 1918	Conciliation Committee	Arbitration	In restaurants, tea shops and oyster shops board may be deducted from wage. Meals may also be deducted from wages. Where an employee is provided with lodging, no deduction shall be made unless provided for in the award.
24	CPI Increases	2 July 1999, 319 IG 589, Matter No 780 of 1999	Patterson C	-	Upon Union applications allowances prescribed by certain clauses shall be increased by the percentage increase in CPI.
27	Authorised Stopwork Meetings	23 December 1975, 201 IG 353, Matter No 329 of 1975	Conciliation Committee	-	One authorised stopwork meeting per year authorised by the secretary of the union with out loss of pay, subject to certain conditions.
28	Right of Entry to Union Officials	1 August 1951, 104 IG 273, Matter Number 244 of 1951	De Baun J	-	Refers to s 129A of the Industrial Arbitration Act, 1940, as amended. Secretary of Union may enter the premises of employers under award during lunch time or non working time for the purposes of conducting legitimate Union business.

## Club Employees (State) Award

Part G	Training	<p>2 July 1999, 319 IG 589, Matter No 780 of 1999; 202 IG 1258, 1096 of 1993, 6 May 1994; 272 IG 1042, 1249 of 1991, 30 March 1992; 268 IG 60, 755 of 1990, 13 December 1990</p>	<p>Patterson C, Marks J, Maidment J</p>	Consent	<p>This part amalgamates previous clauses as 41, 42 and 43 and inserts a new provision, clause 40. Clause 41 was inserted in 1994 and sets out the appropriate standard training throughout the industry. Clause 42 was inserted in 1992 and sets out conditions that shall apply when an employee has been requested by the employer to undertake a specific training course. Clause 43 was inserted in 1991 and sets out weekly wages for trainees under the Australian Trainee System. Clause 40 prescribes standards training for employers to follow.</p>
44	General Conditions	Pre 1940	-	-	<p>This is a longstanding clause which provides that non resident employees shall be provided a separate dressing room, one for females and one for males, of a reasonable standard, that includes sufficient seating, accomodation, lockers, wash basin and toilets for staff use only.</p>

## Club Employees (State) Award

45	Other Conditions	2 July 1999, 319 IG 589, Matter No 780 of 1999	Cmr Patterson	Consent	This clause amalgamated previous existing clauses of protective clothing, travelling facilities and first aid kit.
45A	Deduction of Union Membership Fees		Full Bench	Arbitration	In the decision of Re Club (State) Award (2002) 122 IR 272 it was established that payroll deduction facilities for union dues could be inserted into awards of the Commission. The Commission considered that it would be fair and reasonable for that clause to be inserted in awards of the Commission. The Full Bench considered the encouragement of membership in registered organisations as an appropriate reason to grant the application and that it was in the public interest to do so.
45B	Secure Employment (OHS)		Full Bench	Arbitration	In the Secure Employment Test Case (1996) 150 IR 1, a Full Bench of the Industrial Relations Commission of New South Wales established a general principle with regards to Secure Employment. The decision allowed for awards to be varied, upon application, to include a model "secure employment clause".
46	Anti-Discrimination		Full Bench	Arbitration	This anti-discrimination clause is a standard clause in awards which resulted from a general order of a Full Bench of the Industrial Relations Commission of New South Wales in State Wage Case 1999 (1999) 88 IR 363. The intention of the clause is to prevent discrimination in the workplace.
1	Area, Incidence and Duration	347 IG 431	-	-	The award rescinds and replaces the Club Employees (State) Award (319 IG 589). It shall take effect from 5 July 2004.