

New South Wales Government

**Submission to the Australian Industrial
Relations Commission**

**Award Modernisation in the
Retail Industry**

July 2008

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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 2008.¹
2. This submission of the NSW Government addresses the content of a potential modern award in the retail 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 retail 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 enjoinder 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 to 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

¹ 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.²

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 legislature has set various minimum conditions for NSW employees, in

² NSW Govt Submission to the AIRC Award Modernisation para 9

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 2006³. 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.
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).

³ Secure Employment Test Case [2006] NSWIRComm 38

Family Provisions Test Case

23. The IRC flowed on (with modifications) the Commission's *Family Provisions Case 2005*⁴ by general order in December of that year.
24. The *NSW Family Provisions Case 2005*⁵ 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.
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

⁴ [PR802005]

⁵ Family Provisions Case 2005 [2005] NSWIRComm 478

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.⁶
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.
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*.⁷

⁶ Re application for redundancy awards [1994 AILR 301]

⁷ See para 58 of this submission re *Employment Protection Act 1982*

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*⁸ 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.⁹
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.
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.

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.

⁸ State Working Hours Case 2003 [2003] NSWIRComm 86

⁹ See ss48 and 50 of Industrial Relations Act 1996

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.¹⁰

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.
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

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

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 1998¹¹. 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 decision¹².
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

68. 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.
69. 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.

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

¹² *Secure Employment Test Case* [2006] NSWIRComm 38 (30 March 2006)

70. The NSW Government submits that protections provided to workers under existing NSW award provisions should not be undermined by the Award Modernisation process.
71. 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.
72. 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.
73. 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.
74. 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.
75. 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...' ¹³, and the Request provides that the creation of modern awards is not intended to disadvantage employers or employees. ¹⁴

76. Further, the Request provides that 'a modern award may include industry-specific detail about matters in the NES' ¹⁵, 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 NAPSAAs) for those employees..' ¹⁶.
77. 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 ¹⁷, 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)...' ¹⁸.

1.4 Maintaining the Relevance of Modern Awards

78. 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' ¹⁹. 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 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.
79. As it stands, there appear to be a number of matters of increasing public and industrial importance which may be appropriately addressed

¹³ WR Act s576(2)(b)

¹⁴ Consolidated Ministerial Request paras 2(c) & (d)

¹⁵ Consolidated Ministerial Request para 31

¹⁶ Consolidated Ministerial Request para 32

¹⁷ Workplace Relations Act, s576T.

¹⁸ NSW Govt Submission to the AIRC Award Modernisation para 142.

¹⁹ NSW Govt Submission to the AIRC Award Modernisation para 173.

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.

80. 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.
81. 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.
82. 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.
83. 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.
84. 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.
85. 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.
86. 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.
87. 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.

88. 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

89. 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.
90. 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 NAPSA's 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.
91. 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*.
92. 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

93. 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.²⁰

94. 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.

95. While these conditions are now contained in NAPSAs, they are nonetheless currently enjoyed by the employees subject to those instruments, and the subject employers are obliged to deliver those conditions.

96. 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.

²⁰ NSW Govt Submission to the AIRC Award Modernisation , para 141

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

97. 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.

Retail Industry: NSW State Awards	NSW award code no.	Parties to NSW award	Effective date of wages clause of NSW award	Date of s.19 review of NSW award
Bootmakers and Heel Bar Operatives, &c. (State) Award	789	Employers: EF Employees: SDA	04/08/2007	4/02/2008 (new award)
Butchers, Retail (State) Award	071	Employers: EF, ARA,NMA Employees: AMIEA	03/02/2008	24/07/2007
Clerical Employees in Retail (State) Award	131	Employers: ABI, EF, ARA, AIG Employees: USU	04/08/2007	23/07/2007
Commercial Travellers, &c., (State) Award	159	Employers: ABI, EF, ARA, MTA, AIG Employees: NUW, PATEA	16/10/2007	20/11/2007
Community Pharmacy (State) Award 2001	1590	Employers: EF, Pharmacy Guild Employees: SDA	04/08/2007	23/11/2007 (new award)
Motor Vehicle Salesperson (State) Award	489	Employers: MTA Employees: SDA	24/08/2007	23/11/2003
Pharmacy Assistants (State) Award	113	Employers: EF, ARA, Pharmacy Guild Employees: SDA	04/08/2007	05/02/2004
Retail Industry (State) Training Award	4165	Employers: ABI, EF, ARA, BIA, CCER, MTA, AIG Employees: USU, SDA, Unions NSW	24/07/2007	07/02/2008
Retail Services Employees (State) Award	241	Employers: ABI, EF, ARA, LGA, MTA, AIG Employees: SDA, UnionsNSW	28/07/2007	14/02/2008
Shop Employees (State) Award	601	Employers: ABI, EF, ARA, BIA, CCER, FIAA, MTA, R&CA, SIAG, TTIA, AIG Employees: LHMU, NUW, SDA	28/07/2007	13/02/2008

Transport Industry – Retail (State) Award	675	Employers: ABI, EF, ARA, AIG Employees: TWU	29/11/2007	31/07/2007
Sydney Markets Award 2003	645	Employers: EF Employees: USU	27/01/2002	04/02/2002 (award made – no review)
Van Sales Employees' (State) Award	707	Employers: ABI, EF, AIG Employees: SDA	04/08/2007	13/02/2008
Wholesale Fruit and Vegetable Employee's (State) Award	710	Employers: ABI, EF, AIG Employees: SDA, AWU	04/08/2007	05/02/2004
Wholesale Fruit and Vegetable Employee's (Newcastle, &c) Award	830	Employers: EF Employees: AWU	15/11/2002	12/02/2004
Agricultural, Pastoral or Horticultural Society's Show (State) Award	4200	Employers: ARA Employees: SDA	22/02/2008	15/12/2003
Photographic Industry (State)	525	Employers: ABI, EF, ARA, PMA, AIG Employees: LHMU, SDA	30/11/2007	26/07/2007
Ice Cream Carters and Van Salespersons (State) Award	387	Employers: ABI, EF Employees: TWU	30/12/2007	31/07/2007
Vehicle Industry – Repair Services and Retail (State) Award	697	Employers: ABI, EF, ARA, MTA Employees: SDA, LHMU	04/08/2007	02/06/2005
Nurseries Employees (State) Award	507	Employers: ABI, EF, AIG Employees: AWU	23/07/2007	24/07/2007
Hairdressers, &c. (State) Award	372	Employers: ABI, EF, ARA, EABT, PHA Employees: AWU	19/09/2007	15/09/2007

Key:

RED	common rule award not listed in AIRC Award modernisation decision
ABI	Australian Business Industrial
AHA	Australian Hotels Association (NSW)
AIG	Australian Industry Group
ARA	Australian Retailers Association, New South Wales Division
AWU	The Australian Workers' Union, New South Wales
EF	Employers First
LHMU	Liquor, Hospitality and Miscellaneous Union, New South Wales Branch
PMA	
SDA	Shop, Distributive and Allied Employees' Association, New South Wales
USU	United Services Union

RETAIL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Bootmakers and Heel Bar Operatives, &c. (State) 789	Butchers, Retail (State) 071	Clerical Employees in Retail (State) 131
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 Service Leave	N	N	N
LONG SERVICE LEAVE		Y	N	Y
PUBLIC HOLIDAYS		Y	Y	Y
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	Y
	Redundancy pay	Y	N	Y
FAIR WORK INFORMATION STATEMENT		N	N	N
Allowable Award Matters:				
	Adult wage	Y	Y	Y

MINIMUM WAGES				
	Junior wage	Y	Y	Y
	Apprenticeships/ Traineeships	N*	Y	N
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		Y	Y	Y
SUPERANNUATION		Y	Y	N
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific conditions based NSW Awards in Retail Industry		* Retail Industry (State) Training Wage 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

RETAIL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Commercial Travellers, &c., (State) 159	Community Pharmacy (State) 2001 1590	Motor Vehicle Salesperson (State) 489
MAXIMUM WEEKLY HOURS		Y	Y	N
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 Service leave	N	N	N
LONG SERVICE LEAVE		Y	Y	Y
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
Allowable Award Matters:				
	Adult wage		Y	Y

MINIMUM WAGES		Y		
	Junior wage	N	N	Y
	Apprenticeships/ Traineeships	N	N	Y
TYPE of WORK PERFORMED		Y	Y	N
ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		N	Y	Y
PENALTY RATES		Y	Y	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	Y	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave		Y	Y	Y
SUPERANNUATION		Y	Y	Y
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific conditions based NSW Awards in Retail Industry				

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

RETAIL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Pharmacy Assistants (State) 113	Retail Services Employees (State) 241	Shop Employees (State) 601
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	N	Y	Y
	Emergency Service leave	N	N	N
LONG SERVICE LEAVE		Y	Y	Y
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
Allowable Award Matters:				
MINIMUM WAGES	Adult wage	Y	Y	Y

	Junior wage	Y	Y	Y
	Apprenticeships/ Traineeships	N*	N*	N*
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		Y	Y	Y
SUPERANNUATION		Y	N	N
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific conditions based NSW Awards in Retail Industry		* Retail Industry (State) Training Wage Award	* Retail Industry (State) Training Wage Award	* Retail Industry (State) Training Wage 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

RETAIL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Transport Industry Retail (State) 675	Van Sales Employees' (State) 707	Wholesale Fruit and Vegetable Employees' (State) 710
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 Service leave	N	N	N
LONG SERVICE LEAVE		Y	Y	Y
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
Allowable Award Matters:				

MINIMUM WAGES	Adult wage	Y	Y	Y
	Junior wage	Y	N	Y
	Apprenticeships/ Traineeships	N*	N	N
TYPE of WORK PERFORMED		Y	Y	Y
ARRANGEMENTS for when WORK PERFORMED		Y	Y	Y
OVERTIME RATES		Y	Y	Y
PENALTY RATES		Y	N	Y
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	N
ALLOWANCES		Y	Y	Y
LEAVE, LEAVE LOADINGS, Arrangements for taking leave		Y	Y	Y
SUPERANNUATION		N	Y	Y
CONSULTATION, Representation & Dispute settling procedures		Y	Y	Y
Specific conditions based NSW Awards in Retail Industry		* Retail Industry (State) Training Wage 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

RETAIL INDUSTRY:		NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter	NSW AWARD: incidence of NES/allowable matter
National Employment Standard (NES):		Wholesale Fruit and Vegetable Market Employees (Newcastle, &c.) 830	Hairdressers', &c (State) 372	
MAXIMUM WEEKLY HOURS		Y	Y	
REQUESTS for FLEXIBLE WORKING ARRANGEMENTS		Y	Y	
PARENTAL LEAVE		Y	Y	
ANNUAL LEAVE		Y	Y	
PERSONAL/CARERS LEAVE and COMPASSIONATE LEAVE		Y	Y	
COMMUNITY SERVICE LEAVE	Jury Service	Y	N	
	Emergency Service leave	N	N	
LONG SERVICE LEAVE		Y	Y	
PUBLIC HOLIDAYS		Y	Y	
NOTICE of TERMINATION & REDUNDANCY PAY	Notice of Termination	Y	Y	
	Redundancy pay	Y	Y	
FAIR WORK INFORMATION STATEMENT		N	N	
Allowable Award Matters:				

MINIMUM WAGES	Adult wage	Y	Y	
	Junior wage	Y	Y	
	Apprenticeships/ Traineeships	N	Y	
TYPE of WORK PERFORMED		Y	Y	
ARRANGEMENTS for when WORK PERFORMED		Y	Y	
OVERTIME RATES		Y	Y	
PENALTY RATES		Y	Y	
PROVISION for ANNUALISED WAGE/SALARY ARRANGEMENTS		N	N	
ALLOWANCES		Y	Y	
LEAVE, LEAVE LOADINGS, Arrangements for taking leave		Y	Y	
SUPERANNUATION		Y	Y	
CONSULTATION, Representation & Dispute settling procedures		Y	Y	
Specific conditions based NSW Awards in the Retail Industry				

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 the Retail Industry

98. 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.
99. 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.
100. On commencement of that Act, therefore they were converted into Preserved State Agreements.

Avon Products Pty Limited (Brookvale) Consent Award 2004

Avon Products Pty Ltd (Brookvale) Clerical Employees Consent Award 1997

Chanel (Australia) Pty Limited (State) Award

Coles Myer Logistics Pty Ltd Goulburn and Somersby D.C. Consolidated Award 2004

J. Blackwood and Son Limited Storemen and Packers (State) Award 1994

Storeworkers Campbells Cash and Carry Pty Limited (NSW), NUW NSW Branch Award 2001

Sydney Markets Award 2003

The EnergyAustralia Appliance Sales Consent Award 2003

Woolworths Limited and Woolstar Pty Limited Yennora, Moorebank, Helles Ave D.C. Award 2003

Woolworths Supermarkets and Warehouse Administration (State) Award

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

Part 3 – NSW Award Conditions

101. NSW State awards relevant to this industry have a significant history, indicating their durability and ongoing relevance.
102. 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.
103. 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.
104. 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.
105. See tables attached

Industry Analysis Prepared for the NSW Office of Industrial Relations

106. 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 retail industry.
107. 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.
108. 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: *Retail*

Analysis prepared for the
NSW Office of Industrial Relations

Workplace Research Centre,
The University of Sydney
July 2008

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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 four industries and occupations that are under review including retail.

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 retail?

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

The retail industry consists of ANZSIC retail trade codes 3911 to 4320. Two sectors have been drawn out for comparative purposes. These are: supermarkets, and recreation, clothing and department store retail. The supermarket sub-industry consists only of ANZSIC code 4110, while the department store, recreation and clothing retail sectors includes ANZSIC codes 4241 to 4260. During the analysis it must be remembered that the total retail industry, unlike the total metal manufacturing industry is not comprised of only the two sectors, but includes other retail sectors such as non-store retailing, fuel retailing and motor vehicle retailing.

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 retail trade. The retail trade industries are consistent with ANZSIC coding.

Like the data from Australia at Work, the ESWIRS data set relies on the judgment 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.

2. Retail

This section examines the characteristics of employees in the retail industry as well as two sectors within this industry: supermarkets and the combined group of recreation, clothing and department stores. The other sectors that make up the retail industry include motor vehicle and parts, fuel, specialised food retailing, pharmaceutical and other store-based retailing. The total retail industry has more than 800,000 employees, with 29 per cent employed in supermarkets and another 25 per cent in recreation, clothing and department store retail. Men and women are equally employed in supermarkets, however females make up a larger proportion (73 per cent) of the department store, recreation and clothing retail sector, Table 2.1. Compared to all employees in the labour market there is a greater proportion of women in retail (55 per cent compared to 48 per cent of all employees).

Table 2.1: Sex by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Male	50	119,790	27	54,939	45	372,893
Female	50	119,932	73	149,796	55	462,632
Total	100	239,722	100	204,735	100	835,525

Source: Australia at Work, Wave 1

The retail industry has a younger demographic than the overall employee population. Almost half (47 per cent) of the retail workforce surveyed are aged under 25 years, with 23 per cent aged 16 to 19 years.²² Young people (aged less than 25 years) only make up 21 per cent of the wider employee labour market. The age profile of employees in supermarkets and department stores, recreation and clothing are similar, Table 2.2.

Table 2.2: Age by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
16 – 19	33	78,430	28	56,683	23	195,602
20 – 24	24	56,606	32	65,997	24	202,902
25 – 34	9	22,633	15	29,970	15	124,361
35 – 44	19	44,237	7	14,530	18	153,620
45 – 54	13	30,845	16	32,723	14	120,694
55 +	2	5,759	2	4,317	4	36,620
Refused	1	1,211	0	515	0	1,726
Total	100	239,721	100	204,735	100	835,522

Source: Australia at Work, Wave 1

Casual employment is particularly prevalent in the retail industry. Half (51 per cent) of retail industry employees are employed on a permanent basis, with the other half (47 per cent) are employed as casuals. This is reflected in the supermarket sector; however the recreation, clothing and department store retail sector has a much larger

²² It should be noted that the legal minimum age to work in Australia is under 16 years of age and varies by State, ranging from 14 to 15 years of age. Therefore, the proportion of young people working in retail could be slightly higher than this.

proportion of casual employees. Around two thirds (65 per cent) are employed as casuals, while the remaining third (34 per cent) are employed as permanent staff. Fixed-term contracts are rare in the retail industry.

Table 2.3: Form of Employment by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Permanent	47	110,3531	34	70,331	51	426,007
Fixed term	2	4,864	1	2,209	2	14,397
Casual	51	121,328	65	132,194	47	395,121
<i>Total</i>	100	239,723	100	204,734	100	835,525

Source: Australia at Work, Wave 1

The majority (60 per cent) of jobs in the retail industry are part-time, Table 2.4. This is almost double the rate of part-time jobs in the broader labour market (34 per cent of all Australian employees). The two sectors examined in Table 2.4 have higher levels of part-time employment, with 70 per cent in supermarkets and 83 per cent in recreation, clothing and department stores. The high levels of casual and part-time employment indicate that a primary objective of employers in this industry is to have a ‘flexible’ workforce. The trade-off for employees is that employment in this industry may also tend to be unpredictable and insecure.

Table 2.4: Employment status by sex, Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
<i>Male</i>						
Part-time	63	75,260	69	37,744	44	163,309
Full-time	37	44,530	31	17,194	56	209,583
<i>Female</i>						
Part-time	77	92,124	88	131,172	73	339,142
Full-time	23	27,808	12	18,624	27	123,490
<i>All</i>						
Part-time	70	167,384	83	168,917	60	502,452
Full-time	30	72,338	17	35,818	40	333,073
<i>Total</i>	100	239,722	100	204,735	100	835,525

Source: Australia at Work, Wave 1

Table 2.4 also shows that the rates of part-time employment are unusually high both among male and female employees. Part-time employment tends to be favoured by two main groups of employees: those with primary care responsibilities (generally women) and students. The young demographic of this sector indicates that students may be turning to this sector for employment while completing their studies.

Hours of operation vary across retail workplaces, Table 2.5. There is a fairly even distribution of retail workplaces across the different hours of operation, discounting workplaces that are open 24 hours a day, seven days a week. Around one quarter of retail workplaces each operate less than 40 hours a week, 41 to 48 hours a week, 49 to 56 hours a week, and 57 to 167 hours a week.

Table 2.5: Hours of operation each week by Retail Workplaces, 2006, per cent

	Retail workplaces	All workplaces
Less than 40 hours per week	24	37
41 to 48 hours per week	26	15
49 to 56 hours per week	25	19
57 to 167 hours per week	24	23
168 hours per week (Open 24/7)	1	5
Total	100	100

Source: ESWIRS

Workplaces in the retail industry have a relatively high proportion (58 per cent) of short shifts (less than 8 hours), Table 2.6. This is nearly double the workplace average of 28 per cent. This is compatible with an industry with a young employee base and a relatively high proportion of split shifts.

Table 2.6: Length of most common shift by Retail Workplaces, 2006, per cent

	Retail workplaces	All workplaces
Under 8 hours	58	28
8 to 10 hours	40	56
10 or more hours	3	16
Total	100	100

Source: ESWIRS

Around four-fifths (79 per cent) of retail industry employees are employed in the bottom two skill levels, Table 2.7. Low skilled work is even more prevalent in both the supermarket and recreation, clothing and department store retail sectors, with the majority of employees in the lowest skill level (70 per cent and 80 per cent, respectively). It is abundantly clear that retail consists of predominantly low-skilled employment when compared to the entire labour market (see Appendix A, Table 5).

Table 2.7: Skill level by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Level 1	4	8,585	3	5,926	8	64,069
Level 2	5	12,847	6	12,016	9	71,840
Level 3	5	12,568	1	2,873	5	41,334
Level 4	16	37,122	10	19,388	17	139,485
Level 5	70	168,599	80	164,531	62	518,797
<i>Total</i>	100	239,721	100	204,734	100	835,525

Source: Australia at Work, Wave 1

As expected, sales workers are the largest occupation in the retail industry, making up 64 per cent of the retail workforce, Table 2.8. The next largest occupation is managers (10 per cent of retail employees). In the recreation, clothing and department store retail sub-industry an even larger proportion (81 per cent) are employed as sales workers. While in the supermarket sector labourers make up the second largest occupation, at 16 per cent.

Table 2.8: Occupation by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Managers	7	16,629	7	14,387	10	81,801
Professionals	2	4,803	0	0	4	37,130
Technicians and trades	4	9,436	1	1,776	4	36,041
Community and personal service workers	0	0	1	2,110	0	2,110
Clerical and administrative	4	9,958	7	13,808	7	61,838
Sales workers	62	148,384	81	166,387	64	53,6571
Machinery operators and drivers	5	12,032	1	1,974	3	27,397
Labourers	16	38,479	2	4,291	6	52,637
<i>Total</i>	100	239,721	100	204,733	100	835,525

Source: Australia at Work, Wave 1

Table 2.9 displays the usual hours worked and the hourly rates of pay of non-managerial retail employees. Part-time employees work, on average, 16 hours per week and are paid \$16 per hour. This applies to the two retail sectors analysed. Part-time hours in the retail industry are shorter than average hours for all part-time employees in the labour market (see Appendix A, Table 7).

In the entire retail industry, full-time non-managerial employees work an average of 40 hours per week and earn \$18 per hour, both of which are lower than the national average (of 44 hours per week and \$25 per hour). The average hourly rate for full-time supermarket employees is slightly higher than the total retail industry average, at \$19.

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

	Supermarket	Recreation, Clothing and Department Store	All Retail
	<i>N</i>	<i>N</i>	<i>N</i>
Part-time	155,904	153,620	445,668
Full-time	53,881	26,220*	241,984
<i>Usual hours</i>	<i>Mean</i>	<i>Mean</i>	<i>Mean</i>
Part-time	16	16	16
Full-time	40	40*	42
<i>Paid hours</i>			
Part-time	16	16	17
Full-time	39	39*	40
<i>Average hourly rate</i>			
Part-time	\$16	\$16	\$16
Full-time	\$19	\$17*	\$18

* *n*<30

Source: Australia at Work, Wave 1

In the retail industry, most employees (79 per cent) are employed in workplaces with 100 or fewer employees, Table 3.10. However, the supermarket sector is unique in that more than half (54 per cent) of employees are in medium-sized workplaces and a further 40 per cent are in large workplaces. Employees in recreation, clothing and department store retail tend to work in smaller workplaces – 59 per cent are in workplaces with less than 20 employees. The difference in workplaces size is likely to be a contributing factor to the varying union membership rates between these sectors, explored in the following table.

Table 2.10: Workplace Size by Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	<i>N</i>	%	<i>N</i>	%	<i>N</i>
Less than 20 employees	6	13,755	59	117,132	45	373,294
20 to 100 employees	54	125,284	24	45,742	34	275,495
More than 100 employees	40	92,963	18	35,021	21	171,622
<i>Total</i>	100	232,002	100	198,895	100	820,411

Source: Australia at Work, Wave 1

So far, it has been established that the retail industry is dominated by low-skilled and low paid work that is being performed, primarily, by young employees. This group of workers may seek to improve their bargaining power through collective arrangements. While union membership across the entire retail industry is comparable to national levels – 18 per cent compared to 15 per cent of all private sector employees – the supermarket sector is notably different, Table 2.11. Two in every five employees in this sector are union members but the desire to join a union is lower than the national average (only 5 per cent compared to 10 per cent of all private sector employees).

Table 2.11: Union membership and workplace presence, Retail Industry, 2007

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
<i>Union membership</i>						
Union member	42	99,727	16	32,525	18	153,693
Unrepresented worker	5	11,329	7	13,474	8	63,387
Satisfied non-member	50	119,980	78	158,735	72	604,054
Don't know	4	8,686	0	0	2	14,389
<i>Union represented in the workplace</i>						
Yes	64	152,598	31	62,726	33	279,060
No	20	47,769	53	109,234	52	432,882
Don't know	16	39,356	16	32,774	15	123,583
Total	100	239,723	100	204,734	100	835,525

Source: Australia at Work, Wave 1

The high rate of union membership in the supermarket sector may be related to the higher level of union presence in these workplaces, 64 per cent of employees said that a union was represented in their workplace. Employees in recreation, clothing and department store retail have comparable rates of union membership and union workplace presence to the rest of the private sector (see Appendix A, Table 8).

Due to the high proportion of low-skilled workers in the retail sector, it is not surprising that awards would be the predominate instrument for setting pay and conditions. Nearly half (45 per cent) of all retail industry employees report having award arrangements in place, Table 2.12. However, the incidence of award arrangements is not significantly higher than in the total labour market (see Appendix A, Table 9). It must also be taken into consideration that the retail sector has a higher proportion of employees who do not know the instrument that sets their pay and conditions (13 per cent compared to 8 per cent of all employees). This is particularly high in the recreation, clothing and department store retail (17 per cent of employees) where the presence of unions is relatively low.

Union membership and presence is also likely to be a factor contributing to the higher rate of union collective agreements among the supermarket sector (17 per cent compared to only 9 per cent of employees in the entire retail industry). Perhaps not surprisingly due to the lower proportion of high skilled jobs in this industry, individual common law contracts are relatively uncommon. However, the other type of individual contracts – AWAs – are just as common in the retail sector as they are across all employees.

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

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Award only	39	93,947	35	70,648	35	292,458
Over-award	4	9,227	9	19,285	10	80,246
Collective agreement w/ Union	17	41,674	8	15,360	9	74,438
Collective agreement w/o Union	3	7,782	4	8,117	4	33,940
Collective agreement DK Union	3	7,542	3	5,460	3	24,663
Individual common law	12	28,402	12	23,665	14	120,209
AWA	5	12,518	5	9,818	6	46,008
Other	0	0	0	0	0	1,253
No agreement	6	15,070	8	17,340	6	53,130
Don't Know / Refused	10	23,562	17	35,041	13	109,181
Total	100	239,724	100	204,734	100	835,526

Source: Australia at Work, Wave 1

Over half (55 per cent) of employees in the retail industry recognise the role of the award in their pay and conditions, while around one tenth (12 per cent) are uncertain whether an award plays a role in their agreements. This distribution is similar for both sub-industries, Table 2.13.

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

	Supermarket		Recreation, Clothing and Department Store		All Retail	
	%	N	%	N	%	N
Yes	55	131,954	57	115,745	55	458,686
No	30	72,360	32	65,362	34	280,549
Don't know / Ref	15	35,409	12	23,627	12	96,289
Total	100	239,723	100	204,734	100	835,524

Source: Australia at Work, Wave 1

ESWIRS is able to shed more light on this issue. The majority (60 per cent) of workplaces in the retail industry have agreements that are defined by awards, a much larger proportion than the average (46 per cent), Table 2.14. In particular, managers are more likely to report over-awards than any other instrument (41 per cent). Another point to note is the very small proportion (3 per cent) of retail managers who cite collective agreements as the dominant agreement type in their workplace.

Table 2.14: Dominant agreement type (≥60% of workplaces) by Retail Workplaces, 2006, per cent

	Retail workplaces	All workplaces
Award only	19	15
Over-award	41	31
Collective agreement	3	10
Individual agreements	18	29
No dominant agreement type in workplace	20	16
Total	100	100

Source: ESWIRS

Managers in retail workplaces are least likely to desire collective agreements, whether union (3 per cent) or non-union (3 per cent), to set wages and conditions, Table 2.15.

Instead, managers have a preference for informal individual agreements (35 per cent). However, this is lower than the average of 43 per cent. Instead, managers in retail workplaces are more likely to prefer over-awards (30 per cent compared to 25 per cent overall) and awards (25 per cent compared to 13 per cent overall).

Table 2.15: Managers' preferred method of setting wages and conditions by Retail Workplaces, 2006, per cent

	Retail workplaces	All workplaces
Union collective agreements	3	6
Non-union collective agreements	3	5
Award rates of pay	22	13
Over-awards	30	25
Informal individual agreements	35	43
AWAs	7	7
Total	100	100

Source: ESWIRS

Comparing Tables 2.14 and 2.15 it seems that managers in retail workplaces are happy with using awards to set pay and conditions. However, there appears to be a preference for more individual agreements rather than over-awards. While only one-fifth (18 per cent) of retail managers cite individual agreements as being the dominant agreement type in their workplace, over one-third (35 per cent) would prefer this to be the instrument to set wages and conditions.

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

	%	N
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	N
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	
	%	N	%	N	%	N
<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
<i>Total</i>	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
Total	100	7,965,047

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
Total	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
Total	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
Sex												
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
Age												
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
Workplace Size												
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
Form of Employment												
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
Occupation												
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
Skill Level												
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
Usual & Paid hours												
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
Average hourly rate												
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

Self-reported agreement type												
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
Award Role												
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

Shop Employees (State) Award

Clause No	Clause Title	Date of Origin & Insertion	Commission Member	Arbitrated or Consent	Remarks
5A	Secure Employment		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".
8	Commitment to Training and Careers	266 IG 612, 1227 and 1155 of 1989, 6 December 1989	Glynn J	-	The clause inserted that employers and employees are to commit themselves to varying degrees of training, that the employer will ensure appropriate training is available, and that both parties agree to avail themselves of the benefits of training.
9	Mixed Enterprise	26 September 1990, 1026 and 1027 of 1990	Glynn J	Consent	New clause for mixed enterprises to enhance flexibility etc following upon structural efficiency principle.
19	Blood Donor Leave	22 April 1988, 43, 45, 46 of 1987, 251 IG 1041	Wells DP	-	A clause inserted to allow for blood donation by workers without a deduction of pay up to a maximum of two hours.
26	Facilities	2 August 1968, 398 and 404 of 1968, 172 IG 947 and 24 October 1972, 467 of 1972, 192 IG 961	Conciliation Committee	Consent	The facilities clause represents an amalgamation of the pre-existing first aid, lockers, dining accomodation and notice board clauses. The first aid, lockers and dining accomodation clauses were introduced on 2 August 1968, whilst the notice board clause was introduced later on 24 October 1972. An application to vary the dining accomodation clause was rejected in 1977 [1977] AR 86 at 98. The 1968 award provides that the employer shall provide each employee with locker accomodation and a room containing adequate seating accomodation with sufficient hot water to enable employees to have their meals during their lunch hour. The notice board provision states that employers shall permit the erection of a notice board on their premises, upon which an accredited representative of an industrial union of employees shall be permitted to post formal union notices. The current conditions of the award are to the same effect, but with the consolidated clause.
27	Renovations in Retail Shops	22 April 1988, 43, 45, 46 of 1987, 251 IG 1041	Wells DP	-	When an employer undertakes renovation of premises they shall notify OHS committee, employees affected, the appropriate union and should take appropriate measures to minimise disaibilities caused.

