

**AT830802CRV - Health Services Union of Australia (Private Pathology - Victoria)
Award 2003 [Transitional]**

This Fair Work Australia consolidated award incorporates all amendments up to and including 7 April 2008 (variation [PR981246](#)).

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

- [18. Rates of pay](#)
- [20. Supported wage system](#)
- [21. Allowances](#)

About this Award:

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. C00954 of 1998)

s.113 application to vary
(C2003/6536)

**HEALTH SERVICES UNION OF AUSTRALIA (PRIVATE PATHOLOGY -
VICTORIA) AWARD 1993**
(ODN C No. 31997 of 1992)
[Print L2148 [H0161]]

Health and welfare services

COMMISSIONER GRAINGER

MELBOURNE 5 DECEMBER 2003

Award simplification.

ORDER

A. Further to the decision issued by the Commission on 4 December 2003, [[PR941566](#)] the above award is varied as follows:

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

PART 1 - APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award shall be known as the Health Services Union of Australia (Private Pathology - Victoria) Award 2003.

2. ARRANGEMENT

[2 amended by [PR969993](#) [PR975785](#)]

Part 1 - Application and operation of award

1. Award title
2. Arrangement [[PR975785](#)]
3. Anti-discrimination
4. Industry and scope of award
5. Parties bound
6. Operative date
7. Relationship to other awards
8. Definitions

Part 2 - Dispute resolution

9. Disputes avoidance/settlement procedure

Part 3 - Employer and employees' duties, employment relationship and related arrangements

10. Terms of employment
11. Part-time employment
12. Casual employment [[PR969993](#)]
13. Termination of employment (scientists) [[PR953857](#)]
14. Redundancy [[PR953857](#)]
15. Employees duties
16. Higher duties
17. Roster

Part 4 - Wages and related matters

18. Rates of pay [[PR981246](#)]
- 18A. National training wage [[PR975785](#)]
- 18B. School based apprentices [[PR975785](#)]
19. Payment of wages
20. Supported wage system [[PR981246](#)]
21. Allowances [[PR981246](#)]
22. Accident pay
23. Superannuation

Part 5 - Hours of work, breaks, overtime, shift work, weekend work

24. Hours
25. Overtime
26. Shift work
27. Meal breaks
28. Rest period
29. Oncall/recall

Part 6 - Leave of absence and public holidays

- 30. Annual leave [PR969993]
- 31. Personal leave [PR969993]
- 31A. Bereavement leave [PR969993]
- 32. Parental leave [PR969993]
- 33. Long service leave
- 34. Public holidays [PR967649]
- 35. Jury service
- 36. Study leave

Part 7 - Miscellaneous

- 37. Trainee supervision
- 38. Leave reserved
- 39. Savings clause

Schedule A - Schedule of respondents

3. ANTI-DISCRIMINATION

- 3.1** It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.2** Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 3.3** Nothing in this clause is taken to affect:
- 3.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - 3.3.2** junior rates of pay,
 - 3.3.3** an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
 - 3.3.4** the exemptions in s.170CK(3) and (4) of the Act.

4. INDUSTRY AND SCOPE OF AWARD

- 4.1** This award shall govern the wages and conditions of employment of all employees with a classification listed in clause 18 - Rates of pay of this award whether permanent or casual, engaged in the performance of work in or in connection with the industries and/or industrial pursuits of pathology.
- 4.2** This award shall apply to the private pathology industry in Victoria.

5. PARTIES BOUND

This award shall be binding on the employers referred to in Schedule A - Schedule of respondents of this award in respect of all their employees whose wages and conditions are determined by this award, and on the Health Services Union of Australia and its members.

6. OPERATIVE DATE

This award shall come into effect from the beginning of the first pay period which commences on or after 4 December 2003 and shall continue in force for a period of twelve months.

7. RELATIONSHIP TO OTHER AWARDS

This award supersedes the following awards:

- Health Services Union of Australia (Private Pathology - Victoria) Award 1993 [Print L2148 [AW783567]];
- Health Services Union of Australia (Private Pathology - Victoria) (Roping-in No. 1) Award 1995 [Print M0617 [AW783568]];
- Health Services Union of Australia (Private Pathology - Victoria) Award 1993 (Roping-in No. 2) Award 1995 [Print M8132 [AW783569]];
- Health Services Union of Australia (Private Pathology - Victoria) Award 1993 (Roping-in No. 1) Award 1998 [Print P9883 [AW783570]];

but no right, obligation or liability accrued or incurred under such previous awards will be affected subject to such provisions being deemed allowable matters in accordance to s.89A of the *Workplace Relations Act 1996*.

8. DEFINITIONS

- 8.1 Award** means Health Services Union of Australia (Private Pathology - Victoria) Award 1993 [AW783567 Print L2148]] and/or the Health Services Union of Australia (Private Pathology - Victoria) Award 2003 [AW830802 [PR941577](#)]].
- 8.2 Casual employee** means an employee who is engaged in relieving work or work of a casual nature and whose engagement is terminable by an employer in accordance with the employer's requirements, without the requirement of prior notice by either party, but does not include an employee who could properly be classified as a full-time or part-time employee.
- 8.3 Commission** means the Australian Industrial Relations Commission or its successor.
- 8.4 Employee** means a person employed by those respondents listed in Schedule A - Schedule of respondents on a permanent or casual basis and includes a person employed on a part-time basis.
- 8.5 Employer** means any of the respondents listed in Schedule A - Schedule of respondents and includes a person nominated to act on the behalf of a respondent.
- 8.6 Experience** means for the purpose of this award experience at any workplace subject to this award within the last five years.
- 8.7 Full-time employee** means an employee who is employed and who is ready willing and available to work 38 hours as per week as per clause 24 - Hours of this award at the times mutually agreed upon. Such an employee shall be paid the weekly wage, as prescribed under clause 18 - Rates of pay, appropriate to the employees classification.
- 8.8 Higher qualifications for a Scientist** means:
- 8.8.1** Master of Science, Master of Applied Science, Doctor of Philosophy or Doctor of Science of a Victorian University or Tertiary Institution;
- 8.8.2** Diploma of Bacteriology of London University or its equivalent as recognised by that University;
- 8.8.3** Membership or Fellowship of the Australian College of Physical Scientists and Engineers in Medicine (ACPSEM). Provided however that the qualification is awarded on the basis of assessment in a health related discipline or the employee has been employed as a scientist for a minimum of three years;
- 8.8.4** Fellowship of the Australian Institute of Medical Laboratory Scientists;
- 8.8.5** Human Genetics Society of Australasia Certified Cytogeneticist;
- 8.8.6** Fellow of the Institute of Medical Laboratory Scientists; and
- 8.8.7** Member of the Royal College of Pathologists.

- 8.9 Intermittent employee** means an employee who is engaged on a recurring basis in relieving work or work of a casual nature.
- 8.10 Ordinary pay** shall mean an employee's remuneration for their weekly number of hours of work calculated at the ordinary time for their classification and shall include:
- 8.10.1** The cash value of any deduction for board and lodging;
 - 8.10.2** Overaward payments for ordinary hours of work;
 - 8.10.3** Shift work premiums according to roster of projected rostered; and
 - 8.10.4** Saturday or Sunday work premiums, where they are part of regular work.
- 8.11 Part-time** means an employee who is available to work on a regular basis any number of hours less than 38 hours in any one week as per clause 11 - Part-time employment of this award.
- 8.12 Union** means the Health Services Union of Australia ("HSUA").
- 8.13 Week** in relation to any worker means the worker's ordinary working week.

PART 2 - DISPUTE RESOLUTION

9. DISPUTES AVOIDANCE/SETTLEMENT PROCEDURE

This clause applies to all employees under this award.

9.1 An employee shall have the right for grievances to be heard through all levels of line management.

9.1.1 In the first instance the employee shall attempt to resolve the grievance with their immediate supervisor. The local union representative or other employee representative shall be present if desired by either party.

9.1.2 If the employee still feels aggrieved, then the matter shall be referred to their department head. The local union representative or other employee representative shall be present if desired by either party.

9.1.3 If the grievance is still unresolved the matter shall be referred to senior management and the senior local or State branch union representative.

9.1.4 If the grievance is still unresolved then the State branch union representative shall be advised and a meeting arranged. At this stage the employer's representative shall be advised and shall be represented at the request of either party.

9.1.5 It is agreed steps 9.1.1 to 9.1.4 shall take place within seven days.

9.1.6 If the grievance still exists the matter shall be referred to the Australian Industrial Relations Commission for decision.

9.1.7 Until the grievance is determined work shall continue normally in accordance with the custom or practice existing before the grievance arose while discussions take place. No party shall be prejudiced as to the final settlement by the continuance of work. Health and safety matters are exempted from this paragraph.

PART 3 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

10. TERMS OF EMPLOYMENT

10.1 Health and allied services employees

10.1.1 Notification of classification

- 10.1.1(a)** The employer shall notify each employee in writing on commencement of their employment the classification for that employee and their terms of employment.
- 10.1.1(b)** Any alteration to an employee's classification shall be notified to the employee in writing not later than the operative date of such an alteration.
- 10.1.1(c)** Except as provided in clause 12 - Casual employment of this award employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week. Any employee engaged on a permanent basis not specifically engaged as part-time employee under clause 11 - Part-time employment shall be deemed to be a full-time employee as defined in 8.7.

10.2 Medical laboratory technicians

10.2.1 Full-time employees

Except as provided in clause 11 - Part-time employment an employee ready, willing and available to work the full number of hours required by the employer shall be paid the full weekly wage as prescribed by this award irrespective of the number of hours worked not exceeding 38.

10.2.2 Notification of classification

- 10.2.2(a)** Within three months of the coming into operation of the award all employees covered by the scope of this award shall be given notification by their employer in writing of their classification and the number of years of accredited service in that classification and such employees shall seek to be so notified.
- 10.2.2(b)** A similar notification shall be given to and the employee shall be entitled to receive such notification on their entry to or promotion within the scope of the award.

10.3 Scientists

10.3.1 Full-time employees

An employee who is ready, willing and available to work a full week of 38 hours as and when required by the employer shall be entitled to the full weekly wage prescribed herein irrespective of the number of hours worked not exceeding 38.

10.3.2 Notification of classification

Upon appointment, a scientist shall be notified in writing of their grading and classification within that grade.

11. PART-TIME EMPLOYMENT

11.1 Health and allied services employees

11.1.1 A part-time employee is one who is employed for less than 38 hours per week and who is ready, willing and available to work on a regular basis any number of hours in any one week (or less than 76 hours in a fortnight), provided that the number of hours worked may vary from week to week by mutual agreement between the employer and the employee.

11.1.2 Part-time employees shall be employed subject to the following conditions:

11.1.2(a) Part-time employees shall be paid per hour worked an amount equal to 1/38th of the weekly wage appropriate to the employee's classification.

11.1.2(b) Payment in respect of any period of sick leave (where an employee has accumulated an entitlement) shall be on a pro rata basis made according to the numbers of hours the employee would have worked on the day or days on which the leave was taken so as not to reduce the employee's wage below that level which the employee would have received had the employee not been absent.

11.1.2(c) Any period of annual leave, sick leave or long service leave to which an employee may be entitled shall be on a pro rata basis according to the number of hours the employee worked on average over the past twelve months.

11.1.2(d) The payment or deduction of payment in lieu of notice of termination of employment shall be calculated on a pro rata basis.

11.1.3 Subject to the foregoing provisions of this subclause, all the provisions of this award shall apply to part-time employees.

11.1.4 Notwithstanding the above, a part-time employee employed on a regular basis for four hours or less per week shall be paid under clause 12 - Casual employment.

11.1.5 A full-time employee who returns to work after parental leave may, with the agreement of the employer, work part-time. A part-time employee who returns to work after parental leave may renegotiate the conditions of his/her part-time work with the employer.

Any agreement between the employer and the employee shall be confirmed in writing, and shall include the hours of work, days upon which those hours will be worked and the starting and finishing times of the work. The terms of the agreement may be varied by consent, and the new agreement reduced to writing.

11.2 Medical laboratory technicians

11.2.1 Employees employed on a part-time basis shall be paid for hours worked, either:

11.2.1(a) at an hourly rate equal to 1/38th of the weekly wage appropriate to the employees classification. Employees employed under this subclause shall accrue paid leave entitlements on a pro rata basis;

11.2.1(b) at an hourly rate equal to 1/38th of the appropriate weekly rate plus 25% of such hourly rate for work performed during weekdays and 75% of such hourly rate for work performed on weekends and public holidays. Employees employed under this subclause shall not be entitled to any benefits prescribed in clauses 30 – (Annual leave), 31.3 (Sick Leave), 31.4 (Bereavement Leave) and 34 – (Public holidays).

11.2.2 Either of the following alternate modes of employment in this subclause may be entered into provided they are arrived at by agreement between the employer and the employee and are in writing.

11.2.3 Fixed term employment

A person employed on fixed hours, excluding overtime, for a specified period (or in the case of Maternity leave coverage, for a specified purpose) not exceeding twelve months.

11.2.4 Temporary employment

11.2.4(a) A person employed on hours which may or may not be fixed for a period not exceeding three months.

11.2.4(b) For the purposes of 11.2.3 and 11.2.4(a) should the employment duration limitation be exceeded or should the employee be re-engaged within a period of time equal to an employees allowable period of absence from employment as defined, the employee shall be deemed to have been originally employed on a permanent basis as provided for in 11.2.1 and 11.2.2.

11.2.4(c) The rate of pay and conditions for employees engaged pursuant to 11.2.3 and 11.2.4(a) shall be those provided for in 11.2.1 notice which for employees engaged pursuant to 11.2.4(a) shall be one week.

11.2.4(d) For the purpose of 11.2.4(b), an employees allowable period of absence from employment shall be defined as five weeks in addition to the total period of paid annual leave which the employee actually receives on termination or for which they are paid in lieu.

11.2.4(e) A full-time employee who returns to work after parental leave may, with the agreement of the employer, work part-time. A part-time employee who returns to work after parental leave may renegotiate the conditions of his/her part-time work with the employer.

Any agreement between the employer and the employee shall be confirmed in writing, and shall include the hours of work, days upon which those hours will be worked and the starting and finishing times of the work. The terms of the agreement may be varied by consent, and the new agreement reduced to writing.

11.3 Scientists

11.3.1 Employees employed on a part-time basis shall be paid for hours worked, either:

11.3.1(a) at an hourly rate equal to 1/38th of the weekly rate appropriate to the employees classification. Employees employed under this subclause shall receive leave entitlements on a pro rata basis;

11.3.1(b) at an hourly rate equal to 1/38th of the appropriate weekly rate plus 25% of such hourly rate for work performed during ordinary hours on weekdays and 75% of such hourly rate for work performed on weekends and public holidays. Employees employed under this subclause shall not be entitled to any benefits prescribed in clauses 30 – (Annual leave), 31.3 (Sick Leave), 31.4 (Bereavement Leave) and 34 – (Public holidays).

11.3.2 The conditions of part-time work shall be agreed upon between employer and employee and shall be confirmed in writing between the two parties.

11.3.3 A full-time employee who returns to work after parental leave may, with the agreement of the employer, work part-time. A part-time employee who returns to work after parental leave may renegotiate the conditions of his/her part-time work with the employer.

Any agreement between the employer and the employee shall be confirmed in writing, and shall include the hours of work, days upon which those hours will be worked and the starting and finishing times of the work. The terms of the agreement may be varied by consent, and the new agreement reduced to writing.

12. CASUAL EMPLOYMENT

12.1 Health and allied services employees

- 12.1.1** A casual employee is one who is engaged in relieving work or work of a casual nature but does not include an employee who could be classified as part-time under clause 11 - Part-time employment or full-time under clause 10 - Terms of employment.
- 12.1.2** A casual employee shall be paid for all work done on week days an amount equal to 1/38th of the weekly wage appropriate to the employee's classification per hour plus 25%. For all casual work done on the Saturday, Sunday or public holidays an amount equal to 1/38th of the weekly wage appropriate to the employee's classification per hour plus 75%.
- 12.1.3** A casual employee shall be entitled to receive the appropriate uniform and other allowances contained in this award.
- 12.1.4** A casual employee shall be entitled to payment for overtime according to the provisions of the clause 25 - Overtime.
- 12.1.5** The provisions of clauses 13 - Termination of employment, 14 - Redundancy, 30 - Annual leave and 31 - Personal leave shall not apply to a casual employee.

12.2 Medical laboratory technicians

- 12.2.1** A casual employee is one who is engaged in relieving work or work of a casual nature and whose engagement is terminable by an employer in accordance with the employer's requirements, without the requirement of prior notice by either party, but does not include an employee who could properly be classified as part-time under clauses 11 - Part-time employment or full-time under clause 10 - Terms of employment.
- 12.2.2** A casual employee shall be paid for all work done on weekdays an amount equal to 1/38th of the weekly wage appropriate to the employee's classification per hour plus 25% and for all work done on Saturday, Sundays and public holidays an amount equal to 1/38th of the weekly wage appropriate to the employee's classification per hour plus 75%.
- 12.2.3** In addition a casual employee shall be entitled to receive the appropriate Uniform and other allowances contained in this award.
- 12.2.4** The provisions of clauses 13 - Termination of employment, 14 - Redundancy, 31 - Personal leave, 33 - Long service leave and 34 - Public holidays shall not apply.

12.3 Scientists

- 12.3.1** A casual employee is one who is engaged in relieving work or work of a casual nature and whose engagement is terminable by an employer in accordance with the employer's requirements, without the requirement of prior notice by either party, but does not include an employee who could properly be classified as a full-time or part-time employee under clauses 10 - Terms of employment or 11 - Part-time employment of this award.
- 12.3.2** A casual employee shall be paid for all work done on weekdays an amount equal to 1/38th of the weekly wage appropriate to the employees classification per hour plus 25% and for all work done on Saturday, Sunday and public holidays an amount equal to 1/38th of the weekly wage appropriate to the employees classification per hour plus 75%.
- 12.3.3** In addition a casual employee shall be entitled to receive the appropriate allowances contained in this award.
- 12.3.4** The provisions of clauses 13 - Termination of employment, 14 - Redundancy, 30 - Annual leave and 31 Personal leave shall not apply in the case of a casual employee.
- 12.3.5** A relieving employee is one employed to relieve a full-time employee during that employee's absence from work for any cause.
- 12.3.6** A relieving employee shall be paid not less than the rate applicable to their classification with the addition of 25%, and shall not be entitled to the benefits of sick leave, annual leave and long service leave.
- 12.3.7** A sessional employee is one who is appointed as such and who is normally employed for not more than twenty hours in any one week.
- 12.3.8** Employment shall be from week to week and subject to any individual arrangements between the employer and the sessional employees wages shall be paid weekly.
- 12.3.9** A sessional employee shall be paid per hour worked an amount equal to 1/38th- of the weekly wage prescribed herein with the addition of 25%. Such employee shall not be entitled to the benefits of sick leave, annual leave, or long service leave.
- 12.3.10** Except where the conduct of a sessional employee justifies instant dismissal, seven days' notice of termination of employment shall be given by either the employer or the sessional employee or the normal one week's wages received by the sessional employee paid or forfeited as the case may be in lieu of such notice.

12.4 Caring responsibilities

[12.4 inserted by [PR969993](#) ppc 16Dec05]

12.4.1(a) Subject to the evidentiary and notice requirements in 31.5, casual, relieving and sessional employees are entitled to not be available to attend work, or to leave work:

12.4.1(b) if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or

12.4.1(c) upon the death in Australia of an immediate family or household member.

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

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

13 TERMINATION OF EMPLOYMENT (SCIENTISTS)

- 13.1** Except where the conduct of the employee justifies instant dismissal, at least four weeks notice of termination of employment shall be given by either the employer or the employee, or four week's wages paid or forfeited as the case may be in lieu of notice, except that the period of notice may be reduced by mutual agreement.
- 13.2** Where an employee has given or has been given notice under 13.1 above they shall continue in their employment until the date of expiration of such notice and where the employee refuses to work or is absent from work without just cause or excuse, the employee shall be deemed to have abandoned the employment and shall not be entitled to be paid for work done during the period of notice.
- 13.3** Where any dispute arising from the threatened or actual dismissal of an employee occurs the dispute shall be notified to the Australian Industrial Relations Commission.
- 13.4** In addition to the notice in 13.1 employees over 45 years of age at the time of being given notice by their employer, with not less than two years continuous service, shall be entitled to an additional week's notice.
- 13.5** Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time-off without loss of pay for the purpose of seeking other employment. The time-off shall be taken at times that are convenient to the employee after consultation with the employer.
- 13.7 Service** - for the purpose of this award a year of employment shall be deemed to be unbroken notwithstanding:
- 13.7.1** any annual leave or long service leave taken therein;
- 13.7.2** any interruption or ending of the employment by the institution if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;
- 13.7.3** any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;
- 13.7.4** any absence on account of leave (other than annual leave or long service leave) granted, imposed or agreed to by the employer;
- 13.7.5** any absence on any other account not involving termination of employment - and in calculating a year of employment any absence of a kind mentioned in Clause 13.7 subparagraphs (1), (2), or (3) of this subclause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in Clause 13.7 subparagraphs(4) and (5) of this subclause it will be necessary for the scientist as part of their qualification for annual leave and long service leave to serve additional period as equals the period of such absences.

13.8 Termination of Employment (HAS employees)

13.8.1 In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

13.8.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

13.8.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

[13.8.4 substituted by [PR953857](#) ppc 17Nov04]

13.8.4 The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

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

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

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

[13.8.5 substituted by [PR953857](#) ppc 17Nov04]

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

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

13.8.5(b) to apprentices;

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

13.8.5(d) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or

13.8.5(e) to casual employees.

13.9 Notice of termination by an employee

13.9.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

[13.9.2 substituted by [PR953857](#) ppc 17Nov04]

13.9.2 If an employee fails to give the notice set out in 13.1 and 13.8.1 then the employer has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 13.1, 13.2 and/or 13.4, or 13.8.4.

13.10 Job search entitlement

[13.10 - Time off during notice period title changed by [PR953857](#) ppc 17Nov04]

13.10.1 Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

13.11 Termination of Employment (Medical Laboratory Technicians)

13.11.1 In termination of employment, four weeks' written notice shall be given by the employee or the employer or four weeks' wages paid or forfeited as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for serious and wilful misconduct. In such cases wages shall be paid only up to the time of dismissal.

13.11.2 Where the system of working provides for the taking of accrued days off and an employee's employment is terminated

13.11.2(a) and one or more A.D.O.'s have been granted in advance, or an A.D.O. has been taken during the work cycle in which the employee is terminated, the wages due to that employee shall be reduced by the total of A.D.O.'s taken in advance, and/or the total unaccrued portion of the A.D.O. granted in that work cycle as the case may be;

13.11.2(b) and an employee has not worked a complete twenty-day four-week or five-week cycle, that employee shall receive pro rata accrued entitlements for each day worked or regarded as having been worked (i.e. paid leave) in such cycle payable for the accrued day off.

14. REDUNDANCY

14.1 Definition

[14.1 substituted by [PR953857](#) ppc 17Nov04]

- 14.1.1 Business** includes trade, process, business or occupation and includes part of any such business.
- 14.1.2 Redundancy** occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.
- 14.1.3 Small employer** means an employer which employs fewer than 15 employees.
- 14.1.4 Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.
- 14.1.5 Week's pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:
- overtime;
 - penalty rates;
 - disability allowances;
 - shift allowances;
 - special rates;
 - fares and travelling time allowances;
 - bonuses; and
 - any other ancillary payments of a like nature.

14.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

14.3 Severance pay

[14.3 substituted by [PR953857](#) ppc 17Nov04]

14.3.1 Severance pay - other than employees of a small employer

An employee, other than an employee of a small employer as defined in 14.1, whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

* **Week's pay** is defined in 14.1.

14.3.2 Severance pay - employees of a small employer

An employee of a small employer as defined in 14.1 whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

* **Week's pay** is defined in 14.1.

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

14.3.4 Service prior to 8 June 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 14.3.2. Application may be made for variation of the severance pay provided for in this clause in a particular redundancy situation in accordance with the Redundancy Case Decision [[PR032004](#), 26 March 2004] and the Redundancy Case Supplementary Decision [[PR062004](#), 8 June 2004].

14.4 Employee leaving during notice period

[14.4 substituted by [PR953857](#) ppc 17Nov04]

An employee given notice of termination in circumstances of redundancy may terminate his or her employment during the period of notice set out in 13. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

14.5 Alternative employment

[14.5 substituted by [PR953857](#) ppc 17Nov04]

14.5.1 An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

14.5.2 This provision does not apply in circumstances involving transmission of business as set in subclause 14.8.

14.6 Time off during notice period

[14.6 deleted by [PR953857](#) ppc 17Nov04]

14.6 Job search entitlement

[new 14.6 inserted by [PR953857](#) ppc 17Nov04]

14.6.1 During the period of notice of termination given by the employer in accordance with 14.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

14.6.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

14.6.3 The job search entitlements under this subclause apply in lieu of the provisions of 14.3

14.7 Superannuation benefits

[14.7 deleted by [PR953857](#) ppc 17Nov04]

14.7 Employees exempted

[new 14.7 inserted by [PR953857](#) ppc 17Nov04]

The provisions of this clause do not apply to:

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

14.8 Transmission of business

[14.8 substituted by [PR953857](#) ppc 17Nov04]

14.8.1 The provisions of this clause are not applicable where a business is before or after the date of this award, transmitted from an employer (in this subclause called the **transmittor**) to another employer (in this subclause called the **transmittee**), in any of the following circumstances:

14.8.1(a) Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

14.8.1(b) Where the employee rejects an offer of employment with the transmittee:

- in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
- which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

14.8.2 The Commission may vary 14.8.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

14.9 Employees exempted

[14.9 deleted by [PR953857](#) ppc 17Nov04]

14.9 Incapacity to pay

[new 14.9 inserted by [PR953857](#) ppc 17Nov04]

The Commission may vary the severance pay prescription on the basis of an employer's incapacity to pay. An application for variation may be made by an employer or a group of employers.

[14.10 Employers exempted deleted by [PR953857](#) ppc 17Nov04]

14.10 Redundancy disputes

[new 14.10 inserted by [PR953857](#) ppc 17Nov04]

14.10(a) Paragraphs 14.10(b) and 14.10(c) impose additional obligations on an employer where an employer contemplates termination of employment due to redundancy and a dispute arises (a **redundancy dispute**). These additional obligations do not apply to employers who employ fewer than 15 employees.

14.10(b) Where a redundancy dispute arises, and if it has not already done so, an employer must provide affected employees and the relevant union or unions (if requested by any affected employee) in good time, with relevant information including:

- the reasons for any proposed redundancy;
- the number and categories of workers likely to be affected; and
- the period over which any proposed redundancies are intended to be carried out.

14.10(c) Where a redundancy dispute arises and discussions occur in accordance with this clause the employer will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned.

14.11 Incapacity to pay

[14.11 deleted by [PR953857](#) ppc 17Nov04]

15. EMPLOYEES DUTIES

The following provisions shall apply to all employees under this award.

- 15.1** An employer may direct an employee to carry out duties that are incidental and peripheral to the work normally performed, where those duties are within the employee's skill, competence and training and are consistent with the classification structure of this award.
- 15.2** It is a term of this award that nothing arising from the Structural Efficiency Principle or consequential award variations shall operate so as to decrease, inhibit, detract from or restrict work practices and flexibility already existing within the private pathology industry.

16. HIGHER DUTIES

16.1 Health and allied services employees

16.1.1 An employee engaged in duties carrying a higher rate than the classification in which they are ordinarily employed in any one day or shift shall be paid at the higher rate for:

16.1.1(a) the time so worked for two hours or less; or

16.1.1(b) the full day or shift where the time so worked exceeds two hours.

16.2 Medical laboratory technicians

An employee who is authorised to assume the duties of another employee on a higher classification under this award for a period of five or more consecutive working days shall be paid for the period for which they assumed such duties, at not less than the minimum rate prescribed for the classification applying to the employee so relieved.

16.3 Scientists

16.3.1 An employee who is authorised to assume the duties of another employee on a higher classification under this award for a period of more than five consecutive working days shall be paid for the period for which they assumed such duties, at not less than the minimum rate prescribed for the classification applying to the employee so relieved.

16.3.2 Provided that where a Laboratory Manager is appointed in writing to assume the same administrative responsibilities as the Director of Pathologist in charge, for a period exceeding four weeks, then they shall be paid at the top incremental level for the classification with the addition of 31.5% of that increment.

17. ROSTER

17.1 Health and allied services employees

- 17.1.1** A roster of at least fourteen days' duration setting out employees' daily ordinary working hours, commencing and finishing times and meal intervals shall be posted at least fourteen days before it comes into operation in each work location and where it may be readily seen by such employees and the Secretary or other accredited representative of the Health Services Union of Australia.
- 17.1.2** Except as in emergency situations seven days' notice shall be given of a change in roster.
- 17.1.3** Where an employer requires an employee, without seven days' notice and outside the expected circumstances prescribed in 17.1.2, to perform ordinary duty at other times than those previously rostered, the employee shall be paid in accordance with the hours worked, with the addition of a daily allowance equal to 2.77% of the 1st year of experience rate of pay for a cleaner.
- 17.1.4** Provided that a part-time employee who agrees to work shifts in addition to those rostered will not be entitled to the above specified allowance for the additional shifts worked.
- 17.1.5** An employee, by making a request in writing to the employer, may have their roster fixed by the provisions of 17.1.6, in lieu of 17.1.1 to 17.1.3.
- 17.1.6** Rosters shall be fixed by mutual agreement, subject to the provisions of this award.
- 17.1.7** An employee may repudiate the request referred to in 17.1.5 at any time, by giving written notice to the employer. In such a case the roster for the employee shall be fixed according to the provisions of 17.1.1 to 17.1.3 of this clause, from the commencement of the next full roster period being not less than five clear days after such repudiation is received in writing by the employer.
- 17.1.8** The roster or rosters shall be drawn up so as to provide at least eight hours between successive ordinary shifts.
- 17.1.9** Notwithstanding any other provision of this award, this clause shall not apply to casual employees.
- 17.1.10** In the advent of any dispute arising as to whether a roster arrangement has been adopted in accordance with the meaning and intent of 17.1.4 it shall be referred to the Australian Industrial Relations Commission.

17.2 Medical laboratory technicians

A roster setting out hours of duty, on call requirements, meal times, commencing times, finishing times, weekend duty, night duty, and other duty where applicable and as prescribed by the employer within the provisions of this award shall be kept posted in some readily accessible section of the building for viewing by employees subject to this award. The roster shall be posted at least three days prior to becoming effective. It shall be only altered on account of sickness or other pressing emergency.

17.3 Scientists

17.3.1 A roster setting out hours of duty, on call requirements, meal times, commencing times, finishing times, weekend duty, night duty, and other such duty where applicable and as prescribed by the employer within the provisions of this award shall be kept posted in some readily accessible section of the building for viewing by employees subject to this award. Except in the case of sickness or emergency, the roster shall not be altered without a minimum seven days notice being given to employees affected by the alteration.

17.3.2 Where an employer requires an employee without seven day's notice and outside the circumstances prescribed in 17.3.1 to perform duty at other times than those previously rostered the employee shall be paid in accordance with the hours worked with the addition of a daily allowance equal to 2.5% of the weekly rate of pay for the classification Scientist Grade 1 1st Year.

PART 4 - WAGES AND RELATED MATTERS

18. RATES OF PAY

[18 substituted by [PR954977](#) [PR968508](#) ppc 10Feb06]

18.1 Part 1 - Health and allied services employees

[18.1 varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

The minimum rates of pay shall be:

	\$
Pathology courier	571.20
Cleaner, Laboratory assistant grade 1:	
1st year of experience	575.50
2nd year of experience	579.50
3rd year of experience	583.30
Store-person:	
1st year of experience	591.30
2nd year of experience	594.90
3rd year of experience	598.70
Laboratory assistant grade 2, Store-person working alone:	
1st year of experience	601.60
2nd year of experience	605.20
3rd year of experience	609.00
Clerk grade 1, Laboratory assistant grade 3:	
1st year of experience	606.70
2nd year of experience	610.30
3rd year of experience	616.10
Pathology collector in training:	
1st year of experience	611.50
2nd year of experience	617.10
3rd year of experience	620.90
Clerk grade 2:	
1st year of experience	624.10
2nd year of experience	627.70
3rd year of experience	631.50
Pathology collector grade 1, Clerk grade 3, Store-person advanced, Maintenance/handyperson:	
1st year of experience	635.30
2nd year of experience	639.00
3rd year of experience	642.80

\$

Clerk grade 4:

1st year of experience	644.60
2nd year of experience	648.20
3rd year of experience	652.00

Pathology collector grade 2, Clerk grade 5,

Maintenance/handyperson advanced:

1st year of experience	656.90
2nd year of experience	660.50
3rd year of experience	661.50

Clerk grade 6:

1st year of experience	709.20
2nd year of experience	705.80
3rd year of experience	711.60

18.1.1 Classification Definitions applying to employees paid under clause 18.1

18.1.2 Clerk Definitions

Clerk grade 1 - General clerk, Typist

Clerk grade 2 - Switchboard operator, Receptionist, Stenographer, Audio typist, Pay clerk.

Clerk grade 3 - Computer clerk

Clerk grade 4 - Secretary, Medical stenographer, Medical audio typist

Clerk grade 5 - Computer clerk advanced, Pay clerk advanced

Clerk grade 6 - Private secretary, Clerical supervisor, General services supervisor.

18.1.3 Clerk grade 1

Means a person involved in filing, collating, sorting, basic copy typing (non computer), in-house courier work (non vehicle) performing these duties under general supervision and direction.

18.1.4 Clerk Grade 2

Means a person doing clerical work associated with the scheduling of appointments, completion of pro-forma letters, updating statistics, answering telephone, visitor and patients inquiries, production of receipts, cashiering, basic switchboard operation and the use of overhead paging systems, audio typing and stenography (non-medical), calculation of time sheets and payments to staff.

18.1.5 Computer Clerk

Means clerical employees in the following classifications where their employment involves regular computer related duties, where those duties are an essential part of the function of the position and where the level of skill involved is multi-function administrative or batch processing: General clerk, Typist, Switchboard operator, Receptionist, Ward Clerk, Inpatients/outpatients clerk, Business machine operator, Patients' fee clerk, Stenographer (Other), Audio typist (Other), Medical records clerk, Casualty Clerk, and Pay clerk.

18.1.6 Computer Clerk advanced

Means an employee required to perform more complex computer duties that are outside the normal operating parameters of a dedicated software system (eg accessing the operating system, configuring or installing programs) or is required to perform advanced, responsible or complex functions within a dedicated software system (eg basic system maintenance or administration, security back-ups etc.)

18.1.7 Pay clerk

Is a person appointed as such who assists the pay officer or other responsible person to calculate time sheets and other relevant duties in the process of preparing payments to staff.

18.1.8 Pay clerk advanced

Is a person who in addition to the duties of a Pay Clerk will be required to possess a working knowledge of relevant Industrial awards, regulations and Acts, handles complex payroll and award interpretation inquiries and be capable of functioning semi-autonomously, prioritising their own work within established policies, guidelines and procedures.

18.1.9 Private secretary

Is a person who in addition to the possessing and using secretarial skills, (eg word processing, stenography, reception and typing) provides services at the senior management level including attending to organisational matters: diaries, meetings, agendas, taking of minutes, liaising with other departments or divisions and involvement with routine correspondence.

18.1.10 Laboratory assistant grade 1

An employee whose prime duties and responsibilities do not require a technical knowledge in any specific area whose duties include cleaning washing and preparation of equipment, chemicals and similar duties.

18.1.11 Laboratory assistant grade 2

18.1.11(a) An employee who in addition to duties of a Grade 1 is capable of and required to undertake skilled work in a skilled area of a laboratory, which may include the taking of blood samples.

18.1.11(b) Where an employee's sole area of work is the taking of blood samples but not on a rotation basis through other areas of the laboratory Grade 2 shall apply.

18.1.12 Laboratory Assistant Grade 3

An employee with technical skills capable of and required to work in all facets of a multi-sectional laboratory as necessary, including the taking of blood samples.

18.1.13 Pathology Collector in Training

18.1.13(a) Means a person who is a State Enrolled nurse (or has obtained qualifications equivalent thereto) employed as a Pathology Collector in Training under the general supervision of a Registered General Nurse or equivalent and who is being trained and is receiving detailed instructions of the work to be performed and is acquiring skills in all aspects of specimen collection, containerisation, labelling, transporting and storage, patient/client identification and well being, related clerical work, and/or requires supervision on the work to be performed. A Pathology Collector in Training is supervised at all times by a person qualified in all aspects of pathology collection.

18.1.13(b) A Pathology Collector in Training shall remain on this classification for a period of up to three months whilst training is undertaken and will be paid a rate equivalent to 95% of the appropriate rate for Pathology Collector Grade 1, plus appropriate experience payments.

18.1.14 Pathology Collector Grade 1

Means a person who is a State Enrolled Nurse (or has obtained qualifications equivalent thereto) employed as Pathology Collector under the general supervision of a Registered General nurse or equivalent and is engaged in collecting pathology specimens and performing procedures in accordance with practice instructions; the care, storage and processing of all such pathology specimens; the accurate recording of information relating to patients/clients and specimens in accordance with practice instructions; operating VDU's; attending to the well being of patients; liaising with referrers/referees; receiving payments of accounts.

18.1.15 Pathology Collector Grade 2

18.1.15(a) Means a person who is a State Enrolled Nurse (or has obtained qualifications equivalent thereto) is employed to perform the duties of a Grade 1 Pathology Collector and who under the general supervision of a Registered General Nurse or equivalent, undertakes additional responsibility via the supervision of staff at a collection centre or who has additional qualifications or experience as recognised by the employer.

18.1.15(b) In relation to the definition of Pathology Collector in Training or Pathology Collector Grades 1 or 2 any dispute arising out of the meaning of “equivalent qualifications” will be determined by the Australian Industrial Relations Commission with reference to the views of the Health Industry Training Board.

18.1.15(c) All Pathology Collectors employed prior to 25 February 1992 who are not State Enrolled Nurses or do not hold equivalent qualifications will be classified as per Pathology Collector Grade 1.

18.1.16 Maintenance/Handyperson Advanced

Is a Maintenance/Handyperson Trade who holds post-trade qualifications and is capable of, and required to work autonomously, and is required to priorities their own work with a substantial level of accountability and responsibility.

18.1.17 Maintenance/Handyperson Qualified

Means a person employed as a maintenance/handyperson who has satisfactorily qualified as a tradesperson under the Industrial Training Act (Vic.) 1975 or holds an equivalent qualification acceptable to the employer.

18.1.18 Storeperson Advanced

Is a person employed as a storeperson or storeperson alone who is required to regularly access computers in the course of their employment.

18.1.19 Driver

Is a person who is entrusted by their employer with goods or articles for delivery to customers in such quantities as such customers shall require from them.

18.2 Part 2 - Medical laboratory technicians

The minimum rates of pay shall be:

18.2.1 Medical Laboratory Technician

[18.2.1 substituted by [PR975785](#); [PR981246](#) ppc 04Apr08]

18.2.1(a) Trainees:

	%	\$
1st year	50	314.75
2nd year	60	377.70
3rd year	75	472.13
4th year	90	566.55

Medical laboratory technician trainee means an employee engaged in studies leading to the above qualification.

* Provided that: an adult trainee shall receive not less than 80 per cent of the rate prescribed for the classification Medical Laboratory Technician Grade 1, 3rd year of experience after qualification.

18.2.1(b) Grade 1 i.e. qualified rate

[18.2.1(b) substituted by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
1st year of experience after qualification	611.40
2nd year of experience after qualification	635.20
3rd year of experience after qualification	656.90
4th year of experience after qualification	672.50
5th year of experience after qualification	690.50
6th year of experience after qualification	707.80
7th year of experience after qualification	720.40
8th year of experience after qualification	732.60

Qualified medical laboratory technician means a person employed as such who holds an Associate Diploma of Applied Science (Medical Laboratory) or equivalent as recognised by the employer.

* Provided that: an employee who holds an Associate Diploma of Applied Science shall be entitled to be classified as a Medical laboratory technician grade 1, 3rd year of experience after qualification.

18.2.1(c) Grade 2

[18.2.1(c) substituted by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
1st year of experience at this level	732.60
2nd year of experience at this level	756.00
3rd year of experience at this level	779.40
4th year of experience at this level	801.70

Medical laboratory technician grade 2 means a person appointed to the Grade with additional responsibilities, namely:

- employed on work which in the opinion of the employer requires special knowledge or depth of experience;
- has a teaching role.

18.3 Part 3 – Scientists

18.3.1 The minimum rates of pay shall be:

[18.3.1(a) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

18.3.1(a) Trainees (persons who are engaged in studies leading to the attainment of being eligible for associate membership of the Australian Institute of Medical Laboratory Scientists).

Year of part-time course	Percentage of the rate for the classification Scientist, Grade 1 – 1st Year of experience after qualification	Wages per week
	%	\$
First year	50	323.55
Second year	60	388.26
Third year	75	485.33
Fourth year	85	550.31
Thereafter	90	582.39

18.3.1(a)(i) An adult trainee shall receive not less than 80 per cent of the rate prescribed for the classification **Scientist - grade 1. 1st year of experience after qualification**:

18.3.1(a)(ii) A trainee who as a full-time student passed all subjects in the first full-time year of the course, shall be paid not less than the rate prescribed for the third year of the course (part-time):

18.3.1(a)(iii) A trainee who as a full-time student passed all subjects specified in the second full-time year of the course, shall be paid not less than the rate prescribed for fifth year and thereafter (part-time):

18.3.1(a)(iv) A trainee who as a full-time student has not passed all subjects specified for the appropriate full-time year of the course shall be paid a rate equivalent to the next lower part-time classification than that which would apply in 1.1 and 1.2.

18.3.1(b) Scientist - Grade 1

[18.3.1(b) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
1st year of experience after qualification	673.50
2nd year of experience after qualification	706.40
3rd year of experience after qualification	732.60
4th year of experience after qualification	772.40
5th year of experience after qualification	802.70
and thereafter	833.30

18.3.1(b)(i) A scientist who holds or is qualified to hold the degree of Bachelor of Applied Science Honours or Bachelor of Science Honours (four-year course) shall be entitled to be classified as a Scientist - grade 1, 2nd year of experience after qualification;

18.3.1(b)(ii) A scientist who holds or is qualified to hold the degree of Master of Applied Science or Master of Science shall be entitled to be classified as a Scientist - grade 1, 3rd year of experience after qualification, provided further that a scientist so classified shall not be entitled to the higher qualification payment prescribed in Appendix C for a further period of two years;

18.3.1(b)(iii) A scientist who is a Fellow of the Australian Institute of Medical Laboratory Scientists or is qualified to hold a degree of Doctor of Philosophy shall be entitled to be classified as a Scientist - grade 1, 5th year of experience after qualification, provided further that a scientist so classified shall not be entitled to the higher qualification payment prescribed in Appendix C for a further two years; and

18.3.1(b)(iv) A sole scientist i.e. a scientist who is the only scientist employed in a laboratory, shall be paid at the rate of 5% of the Scientist - Grade 1, 1st year of experience after qualification, in addition to the appropriate rate applicable to a Scientist - Grade 1.

18.3.1(c) Scientist - Grade 2

[18.3.1(c) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
On appointment	833.30
2nd year after appointment	869.70
3rd year after appointment	904.90
4th year after appointment	943.20

18.3.1(c)(i) A qualified scientist appointed to Grade 2 is performing work which requires special knowledge or depth of experience above that of Grade 1 scientist, or appointed as such because in addition to their Grade 1 duties they consistently demonstrate initiative in their area of work.

18.3.1(c)(ii) Provided that a Scientist grade 1 6th year of experience and thereafter appointed to this grade shall be paid at the Scientist grade 22nd year after appointment rate.

18.3.1(d) Scientist - Grade 3

[18.3.1(d) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
On appointment	985.80
2nd year after appointment	1015.00
3rd year after appointment	1037.80
4th year after appointment	1086.40

8.3.1(d)(i) In addition to the requirements of a Grade 2 a Grade 3 Scientist has at least seven years experience and is in-charge of scientific and/or related work.

18.3.1(e) Scientist - Grade 4

[18.3.1(e) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

	\$
On appointment and during 2nd year after appointment	1128.60
During 3rd and 4th years after appointment	1180.30
Thereafter	1252.30

18.3.1(e)(i) In addition to the requirements of a Grade 3, a Grade 4 Scientist is appointed to this Grade by agreement between the employer and the employee.

18.3.1(f) Progression through pay points

Progression for all classifications in this sub-clause for which there is more than one wage point shall be by annual increments, having regard to the acquisition and utilisation of skills and knowledge through experience in an employee's practice setting(s) over such period.

18.3.1(g) For the purposes of 18.3:

- 18.3.1(g)(i)** the first year of experience after qualification shall be deemed to commence on 1 January in the year following the year during which the scientist presented themselves for final examination which, if successful, would entitle the scientist to the degree of Bachelor of Science or Bachelor of Applied Science.
- 18.3.1(g)(ii)** Where a scientist was required to attend a supplementary examination, such scientist shall, if successful, be deemed to have passed the final examination in the year during which the final examination was held.
- 18.3.1(g)(iii)** Where a Scientist Grade 1 1st year of experience after qualification commences employment during the first year after qualification, the scientist shall be advanced to the classification Scientist Grade 1 2nd year of experience after qualification, as from 1 January in the next succeeding year.
- 18.3.1(g)(iv)** For the purposes of clause 18.3 where a scientist has a higher qualification they shall be paid in addition the following:
- 18.3.1(g)(iv)(1)** For M.A.A.C.B., Diploma of Bacteriology, M.Sc., M.App.Sc., M.A.I.31., H.G.S.A.C.C.. Graduate Diploma in health Administration (see clause 8 - Definitions) or any other recognised equivalent Degree or Diploma from a tertiary institution, the sum of 6-1/2% of the Scientist grade 1. 1st year of experience rate per week:
 - 18.3.1(g)(iv)(2)** For F.A.A.C.B., F.A.I.M.L.S., D.Sc., Ph.D., F.A.I.31., or F.I.M.L.S. or Member of the Royal College of Pathologists (see clause 8 - Definitions) the sum of 10% of the Scientist Grade 1. 1st year of experience rate per week.
 - 18.3.1(g)(iv)(3)** Such allowance shall not be cumulative in the case of multiple higher qualifications.

18.4 Arbitrated safety net adjustment

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review-Wages June 2005* decision [PR002005]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

18.5 Federal minimum wage

18.5.1 The federal minimum wage

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

18.5.2 Amount of federal adult minimum wage

18.5.2(a) The federal minimum wage for full-time adult employees not covered by 18.5.4 [special categories clause], is \$484.40 per week.

18.5.2(b) Adults employed under a supported wage clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage clause applicable to the employee concerned to the amount of the minimum wage specified in 18.5.2(a).

18.5.2(c) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in 18.5.2(a) according to the number of hours worked.

18.5.3 How the federal minimum wage applies to juniors

18.5.3(a) The wage rates provided for juniors by this award continue to apply unless the amount determined under 18.5.3(b) is greater.

18.5.3(b) The federal minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in 18.5.2

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

18A. RELATIONSHIP TO THE NATIONAL TRAINING WAGE AWARD 2000

[18A inserted by [PR975785](#) ppc 01Dec06]

A party to this award shall comply with the terms of the *National Training Wage Award 2000 [Transitional]*, [AT790899CAN] as varied, as though bound by clause 4 of that award.

18B. SCHOOL BASED APPRENTICES

[18B inserted by [PR975785](#) ppc 01Dec06]

18B.1This clause shall apply to school based apprentices. A school based apprentice is a person who is undertaking an apprenticeship in accordance with this clause while also undertaking a course of secondary education.

18B.2The hourly rates for full-time junior and adult apprentices as set out in this award shall apply to school based apprentices for total hours worked including time deemed to be spent in off the job training.

18B.3For the purposes of 18B.2 above, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice is paid is deemed to be 25% of the actual hours each week worked on-the-job. The wages paid for training time may be averaged over a semester or year.

18B.4The school-based apprentice shall be allowed, over the duration of the apprenticeship, the same amount of time to attend of-the-job training as an equivalent full-time apprentice.

18B.5For the purposes of this sub-clause, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

18B.6The duration of the apprenticeship shall be as specified in the training agreement or contract for each apprentice. The period so specified to which the apprentice wage rates apply shall not exceed six years.

18B.7School based apprentices shall progress through the wage scale at the rate of 12 months progression for each two years of employment as an apprentice.

18B.8These rates are based on a standard full-time apprenticeship of four years. The rate of progression reflect the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

18B.9Where an apprentice converts from school-based to full-time, all time spent as a full-time apprentice shall count for the purposes of progression through the wage scale. This progression shall apply in addition to the progression achieved as a school-based apprentice.

18B.10School-based apprentices shall be entitled pro-rata to all of the conditions of employees under this Award.

19. PAYMENT OF WAGES

19.1 Health and allied services employees

19.1.1 Wages shall be paid during working hours not later than the Thursday after the completion of the pay period provided that:

19.1.1(a) when a public holiday occurs on the normal pay day payment shall be on the day in advance;

19.1.1(b) for employees paid other than by direct bank transfer, who are rostered off on the normal pay day who work on either of the two days preceding the normal pay day shall be paid on either of those two days;

19.1.1(c) when an employee paid other than by direct debit transfer is rostered off for the normal pay day and the three days in advance of that day payment shall occur by either of the following:

19.1.1(c)(i) on the next rostered shift as per 19.1.1;

19.1.1(c)(ii) by the employee attending for payment on the pay day.

19.1.2 An employer shall provide to each employee at the time of payment of their wages a statement detailing the following information: name and classification of the employee; the period the payment relates to and the date of payment; their hourly rate of pay; the amount of payment including allowances; the amount of pay deductions; amounts of superannuation contributions and details of funds into which contributions are paid.

19.1.3 When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other monies owing to an employee shall be made to the employee.

19.1.4 If an employee is kept waiting for more than 24 hours such employee shall be paid overtime rates for the duration of the period until such monies owing are paid with a minimum payment of two hours and a maximum payment of seven hours and 36 minutes per day.

19.1.5 Notwithstanding the above, this subclause will not come into affect if the payment of wages or other monies owed falls on a Bank Holiday or declared public holiday. This clause will come into effect upon the expiration of such a Bank holiday or declared public holiday.

19.1.6 This subclause will not come into effect if any unforeseen event outside the control of the employer frustrates the employer's ability to meet the requirements of this subclause.

19.1.7 Where the system of working provides for the taking of ADOs and an employee's employment is terminated:

19.1.7(a) And one or more ADOs have been granted in advance; or

19.1.7(b) An ADO has been taken during the work cycle during which the employee is terminated, the wages due to that employee shall be reduced by the total of the ADOs taken in advance, and/or the total un-accrued portion of the ADO granted in that work cycle as the case may be.

19.1.8 And an employee has not worked a complete four week or five week cycle as the case may be, they shall receive pro rata accrued entitlements for each day worked or regarded as having been worked in such cycle payable for the accrued day off.

19.2 Medical laboratory technicians

Wages shall be paid not later than Thursday following the end of the pay period. On or prior to the pay day the employer shall state to each employee in writing the amount of wages to which the employee is entitled, the amount of deductions there from, and the net amount being paid to the employee.

19.3 Scientists

Subject to any individual arrangements between an employer and an employee (other than a sessional employee) wages shall be paid no later than a Thursday. On or prior to the pay day the employer shall state to each employee, in writing, the amount of wages to which the employee is entitled, the amount of deductions there from, and the net amount being paid to the employee.

20. SUPPORTED WAGE SYSTEM

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

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

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

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

20.1.4 **Assessment instrument** means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

20.2 Eligibility criteria

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

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

20.2.3 This clause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act*, or if a part only has received recognition, that part.

20.3 Supported wage rates

[20.3 varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

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

Assessed capacity (20.4)	Prescribed award rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

20.3.2 Provided that the minimum amount payable shall be not less than \$66.00 per week.

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

20.4 Assessment of capacity

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

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

20.4.2 The employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

20.5 Lodgment of assessment instrument

20.5.1 All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Australian Industrial Relations Commission.

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

20.6 Review of assessment

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

20.7 Other terms and conditions of employment

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

20.8 Workplace adjustment

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

20.9 Trial period

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

20.9.2 During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

[20.9.3 varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

20.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$66.00 per week.

20.9.4 Work trials should include induction or training as appropriate to the job being trialled.

20.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under S.4 hereof.

21. ALLOWANCES

[21 substituted by [PR954977](#); [PR968508](#) ppc 10Feb06]

21.1 Health and allied services employees

21.1.1 Meal allowances

- 21.1.1(a)** An employee shall be paid meal money or supplied with an adequate meal in addition to any overtime payment as follows:

[21.1.1(a)(i) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

- 21.1.1(a)(i)** When required to work after the usual finishing hour of work beyond one hour (Monday to Friday) or in the case of shift workers when the overtime work on any shift exceeds one hour - \$9.66. Provided that where such overtime work exceeds four hours a further meal allowance of \$7.80 shall be paid.

[21.1.1(a)(ii) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

- 21.1.1(a)(ii)** When required to work more than five hours overtime on a Saturday or Sunday or a shift worker required to work more than five hours on a rostered day off - \$9.66 and a further \$7.80 when required to work more than nine hours on such a day.

21.1.3 Travelling allowance

- 21.1.3(a)** When an employee is involved in travelling on duty, all reasonably incurred expenses in respect to fares, meals and accommodation shall be reimbursed by the employer on production of receipted account(s) or other evidence acceptable to the employer.

- 21.1.3(b)** Provided further that the employee shall not be entitled to reimbursement for those expenses which exceed the mode of transport, meals or the standard of accommodation agreed for the purpose with the employer.

* There should be no increase in travel allowance - as the cpi figures for private motoring decreased by 1.8%

21.1.4 Uniforms, protective clothing

- 21.1.4(a)** Employees required by the employer to wear uniforms shall be reimbursed the cost of, or supplied with an adequate number of such uniforms, overalls, caps, or aprons appropriate to the occupation.

- 21.1.4(b)** Uniforms, overalls, caps or aprons shall remain the property of the employer and be laundered and maintained by the employer free of cost to the employee.

[21.1.4(b)(i) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

21.1.4(b)(i) The employer shall pay each employee a uniform allowance at the rate of \$1.26 per day or part there of on duty or \$6.40 per week whichever is the lesser amount. The provisions of this clause shall not apply where the uniform is supplied by the employer.

[21.1.4(b)(ii) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

21.1.4(b)(ii) The employee shall be paid a laundry allowance of 31 cents per day or part thereof on duty of \$1.52 per week whichever is the lesser amount. The provisions of this clause shall not apply where the uniforms are laundered by or at the expense of the employer.

21.1.4(c) The uniform allowance, but not the laundry allowance shall be paid during all absences on leave, except absences on long service leave and absences on sick leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave shall be the average of the allowance paid during the four weeks immediately preceding the taking of leave.

21.1.4(d) Employees shall be reimbursed the cost of rubber gloves and all necessary protective clothing and safety appliances and an adequate supply of same shall be maintained.

21.2 Medical laboratory technicians

21.2.1 Damaged clothing

Where an employee in the course of their employment suffers any damage to or soiling of clothing or other personal effects (excluding female hosiery), the employer shall reimburse the employee for the replacement, repair or cleaning of such clothing or personal effects, provided that immediate notification is given of such damage or soiling. This clause shall not apply in the case where the damage or soiling is occasioned by the negligence of the employee.

21.2.2 Meal allowances

[21.2.2(a) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

21.2.2(a) An employee shall either be paid an allowance of \$11.10 or supplied with a meal:

21.2.2(a)(i) when overtime in excess of one hour is worked after the usual time of ceasing work for the day;

21.2.2(a)(ii) when recalled to duty outside of usual working hours for a period in excess of two hours, and when the time of such recall coincides with or over-runs normal workplace meal time.

21.2.3 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on-call, the employer shall reimburse the installation costs and/or the subsequent rental charges on production of receipted accounts.

* There should be no increase in travel allowance - as the cpi figures for private motoring decreased by 1.8%

21.2.4(b) Any employee who is recalled to the employer's premises for any purpose shall be either reimbursed the cost of transport or be provided with transport (i.e. taxi or hire car) for the outward and return journeys at the employee's request.

21.2.4(c) Where an employee is required to travel during normal working hours on employer business they shall be either reimbursed the cost of, or provided with transport.

21.2.4(d) Any approved fares incurred by an employee in the performance of their duty shall be reimbursed by the employer.

21.2.5 Uniforms, protective clothing

21.2.5(a) Each employer shall have made available at the employer's expense an adequate number of suitable uniforms for each employee, the responsibility for laundering and maintenance of which rests with the employer and is at the employer's expense.

[21.2.5(b) varied by [PR975785](#); [PR981246](#) ppc 04Apr08]

21.2.5(b) Notwithstanding 21.2.1 of this clause the employer may, by agreement with the employee pay an allowance of \$6.39 per week or \$1.27 a day when the employee is expected to provide their own uniforms or coats. When such employee's uniforms or coats are not laundered by or at the expense of the employer, the employee shall be paid a laundry allowance of 32 cents per day or \$1.51 per week.

21.3 Scientists

21.3.1 Damaged clothing

Where an employee in the course of their employment suffers any damage to or soiling of clothing or other personal effects (excluding female hosiery), the employer shall reimburse the employee for the replacement, repair or cleaning of such clothing or personal effects, provided that immediate notification is given of such damage or soiling. This clause shall not apply in the case where the damage or soiling is occasioned by the negligence of the employee.

21.3.2 Meal allowances

21.3.2(a) An employee shall either be paid an allowance of \$10.38 or be supplied with a meal:

21.3.2(a)(i) when overtime in excess of one hour is worked after the usual time of ceasing work for the day;

21.3.2(a)(ii) when recalled to duty outside of usual working hours for a period in excess of two hours, and when the time of such recall coincides with or over-runs normal meal time.

21.3.3 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on-call, the employer shall reimburse the installation costs and/or the subsequent rental charges on production of receipted accounts.

* There should be no increase in travel allowance - as the cpi figures for private motoring decreased by 1.8%

21.3.4(b) Any employee so recalled who does not use their vehicle shall be provided, at the expense of the employer, with a hire car or taxi, for the inward and return journeys.

21.3.4(c) Should an employee be required to use their vehicle during normal working hours on the business of the employer, the employee shall receive the allowance for mileage as granted in 21.3.4 (a).

21.3.4(d) An employee on rostered shifts who is required to use public transport to journey to or from work between 9.00 p.m. and 7.00 a.m. shall be provided with transport (taxi or hire car) if no public transport is available for the inward and/or outward journey. The cost of which shall be reimbursed to the employee.

22. ACCIDENT PAY

22.1 Health and allied services employees

Where an entitlement to Accident Make-up Pay arises under this award any reference to the *Workers Compensation Act 1958* shall be deemed to include a reference to the *Accident Compensation Act 1985* and any reference to the *Accident Compensation Act 1985* shall be deemed to include a reference to the *Workers Compensation Act 1958*.

22.1.2 Definitions

The words hereunder shall bear the respective definitions set out herein:

22.1.2(a) Total incapacity - In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the *Workers Compensation Act* (hereinafter referred to as the Act) and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(i) of the Act for the week in question and the total 38 hour weekly rate and weekly over award payment for a day worker which would have been payable under this award for the employee's normal classification of work for the week in question if they had been performing their normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

22.1.2(b) Partial incapacity - In the case of an employee who is or deemed to be partially incapacitated within the meaning of the *Workers Compensation Act* and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(ii) of the Act for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business (as determined expressly or by implication by the *Workers Compensation Board* or as agreed between the parties) and the total 38 hour weekly rate and weekly over award payment for a day worker which would have been payable under this award for the employee's normal classification of work for the week in question if they had been performing their normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

22.1.3 The total 38 hour weekly award rate and weekly over award payment above mentioned shall be the same as that applying for a total incapacity provided that where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to Section 9.6(1) of the Act, such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

- 22.1.4** For purposes of the calculation of the total 38 hour weekly award rate and weekly overaward payment in 22.1.2(a) and 22.1.2(b), payments made to an employee arising from a production incentive earnings scheme (whether arising from a payment by results, task or bonus scheme or however titled) shall not be taken into account.
- 22.1.5** **Payment for part of a week** - Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount shall be a direct pro rata.
- 22.1.6** Injury shall be given the same meaning and application as applying under the Workers Compensation Act, and no injury shall result in the application of accident pay unless an entitlement exists under the Act.
- 22.1.7** **Workers Compensation Act** - Means *Workers Compensation Act 1958*, as amended from time to time, of the State of Victoria.
- 22.1.8** **Qualifications for payment**

Always subject to the terms of this clause, an employee covered by this award shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by their employer who is liable to pay compensation under the Act, which said liability by the employer for accident pay may be discharged by another person on their behalf, provided that:

- 22.1.8(a)** Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom they were employed at the time of the incapacity and then only for such period as they receive a weekly payment under the Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from the employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.
- 22.1.8(b)** Provided further that in the case of the termination of employment by an employer of an employee who is incapacitated and who except for such termination would be entitled to accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where the termination is due to serious and/or wilful misconduct on the part of the employee.
- 22.1.8(c)** In order to qualify for the continuance of accident pay on termination an employee shall if required provide evidence to the employer of the continuing payment of weekly workers compensation payments.
- 22.1.9** Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then, subject to 22.1.13 and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.

22.1.10 Provided that as to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as provided in Section 3 of the Act) such injuries or diseases shall not be subject to accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.

22.1.11 Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.

22.1.12 An employee on engagement may be required to declare all workers compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit their entitlement to accident pay under this clause.

22.1.13 Maximum period of payment

The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 26 weeks for any one injury as defined in 22.1.6, provided that in respect of an employee receiving or entitled to receive accident pay on or after 1 January 1981, the aforesaid maximum period or periods shall be a total of 39 weeks for any one injury as defined.

22.1.14 Absences on other paid leave

An employee shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence.

22.1.15 Notice of injury

An employee upon receiving an injury for which they claim to be entitled to receive accident pay shall give notice in writing of the said injury to their employer as soon as reasonably practicable after the occurrence thereof; provided that such notice may be given by a representative of the employee.

22.1.16 Medical examination

22.1.16(a) In order to receive entitlement to accident pay an employee shall conform to the requirements of the Act as to medical examination.

22.1.16(b) Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and their fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

22.1.17 Cessation of weekly payments

Where there is a cessation or redemption of weekly compensation payments under the Act the employer's liability to pay accident pay shall cease as from the date of such cessation or redemption.

22.1.18 Civil damages claims

22.1.18(a) An employee receiving or who has received accident pay shall advise their employer of any action they may institute or any claim they may make for damages. Further the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgment or settlement on that injury.

22.1.18(b) Where an employee obtains a judgment or settlement for damages in respect of an injury for which they have received accident pay the employer's liability to pay accident pay shall cease from the date of such judgment or settlement; provided that if the judgment or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to their employer any amount of accident pay already received in respect of that injury by which the judgment or settlement has not been so reduced.

22.1.18(c) Where an employee obtains a judgment or settlement for damages against a person other than the employer in respect of an injury for which they have received accident pay the employer's liability to pay accident pay shall cease from the date of such judgment or settlement; provided that if the judgment or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the judgment or settlement has not been so reduced.

22.1.19 Insurance against liability

Nothing in this award shall require an employer to insure against liability for accident pay.

22.1.20 Variations in compensation rates

Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

22.1.21 Death of an employee

All rights to accident pay shall cease on the death of an employee.

22.1.22 Commencement

This clause shall only apply in respect of incapacity arising from any injury occurring or recurring on or after 3 March 1975.

22.2 Medical laboratory technicians and scientists

22.2.1 Definitions

The words hereunder shall bear the respective definitions set out herein:

22.2.1(a) Total incapacity - In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the *Workers Compensation Act* (hereinafter referred to as the Act) and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(i) of the Act for the week in question and the total 38 hour weekly rate and weekly over award payment for a day worker which would have been payable under this award for the employee's normal classification of work for the week in question if they had been performing their normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

22.2.1(b) Partial incapacity - In the case of an employee who is or deemed to be partially incapacitated within the meaning of the *Workers Compensation Act* and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(ii) of the Act for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business (as determined expressly or by implication by the Workers Compensation Board or as agreed between the parties) and the total 38 hour weekly rate and weekly over award payment for a day worker which would have been payable under this award for the employee's normal classification of work for the week in question if he had been performing his normal duties provided that such latter rate shall exclude additional remuneration by way of shift premiums, overtime payments, special rates or other similar payments.

22.2.3 The total 38 hour weekly award rate and weekly overaward payment abovementioned shall be the same as that applying for a total incapacity provided that where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to Section 9.6(1) of the Act, such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

22.2.4 For purposes of the calculation of the total 38 hour weekly award rate and weekly over award payment in 22.2.1(a) and 22.2.5(b) payments made to an employee arising from a production incentive earnings scheme (whether arising from a payment by results, task or bonus scheme or however titled) shall not be taken into account.

22.2.5 Payment for part of a week

22.2.5(a) Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount shall be a direct pro rata.

22.2.5(b) Injury shall be given the same meaning and application as applying under the *Workers Compensation Act*, and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

22.2.5(c) *Workers Compensation Act* means *Workers Compensation Act 1958*, as amended from time to time, of the State of Victoria. Where an entitlement to Accident Make-up Pay arises under this award any reference to the *Workers Compensation Act 1958* shall be deemed to include a reference to the *Accident Compensation Act 1985* and any reference to the *Accident Compensation Act 1985* shall be deemed to include a reference to the *Workers Compensation Act 1958*.

22.2.6 Qualifications for payment

22.2.6(a) Always subject to the terms of this clause, an employee covered by this award shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by his employer who is liable to pay compensation under the Act, which said liability by the employer for Accident Pay may be discharged by another person on his behalf provided that:

22.2.6(a)(i) Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom he was employed at the time of the incapacity and then only for such period as he receives a weekly payment under the Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from his employer but such alternative employment is available with another employer then the relevant amount of accident pay will still be payable.

22.2.6(a)(ii) Provided further that in the case of the termination of employment by an employer of an employee who is incapacitated and who except for such termination would be entitled to accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where the termination is due to serious and/or wilful misconduct on the part of the employee. In order to qualify for the continuance of accident pay on termination an employee shall if required provide evidence to his employer of the continuing payment of weekly workers compensation payments.

22.2.6(b) Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then, subject to 22.2.7 and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.

22.2.6(c) Provided that as to industrial disease contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as provided in Section 3 of the Act) such injuries or diseases shall not be subject to accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.

22.2.6(d) Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity. Provided, however, that in the case of an employee who contracts an infectious disease in the course of duty and is entitled to receive Workers' Compensation therefore shall receive accident pay from the first day of incapacity.

22.2.6(e) An employee on engagement may be required to declare all Workers' Compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit his entitlement to accident pay under this clause.

22.2.7 Maximum period of payment

The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury as defined in 22.2.5(b).

22.2.8 Absences on other paid leave

An employee shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence.

22.2.9 Notice of injury

An employee upon receiving an injury for which he claims to be entitled to receive accident pay shall give notice in writing of the said injury to his employer as soon as reasonable practicable after the occurrence thereof; provided that such notice may be given by a representative of the employee.

22.2.10 Medical examination

22.2.10(a) In order to receive entitlement to accident pay an employee shall conform to the requirements of the Act as to medical examination.

22.2.10(b) Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and his fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

22.2.11 Cessation of weekly payments

Where there is a cessation or redemption of weekly compensation payments under the Act the employer's liability to pay accident pay shall cease as from the date of such cessation or redemption.

22.2.12 Civil damages claim

22.2.12(a) An employee receiving or who has received accident pay shall advise his employer of any action he may institute or any claim he may make for damages. Further, the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgment or settlement on that injury.

22.2.12(b) Where an employee obtains a judgment or settlement for damages in respect of an injury for which he has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgment or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to his employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

22.2.12(c) Where an employee obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which he has received accident pay the employer's liability to pay accident pay shall cease from that date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to his employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

22.2.13 Insurance against liability

Nothing in this award shall require an employer to insure against his liability for accident pay.

22.2.14 Variations in compensation rates

Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

22.2.15 Death of an employee

All rights to accident pay shall cease on the death on an employee.

22.2.16 Commencement

This clause shall only apply in respect of incapacity arising from any injury occurring or recurring on or after 3 November 1975.

23. SUPERANNUATION

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

This clause shall apply to all employees under this award.

23.1 Contributions

23.1.1 Employers respondent to this award shall pay at least monthly to:

23.1.1(a) The trustees of the Hospital Employees Superannuation Trust of Australia; or

23.1.1(b) Any other fund as agreed between the parties provided such fund is approved by the Occupational Superannuation Commissioner as conforming to the Commonwealth Government's Operational Standards for Occupational Superannuation Funds;

23.1.2 On behalf of each employee a percentage contribution of ordinary pay (as defined below). The percentage contribution shall be as specified in 23.5.2. Such contribution shall be calculated on the ordinary pay received by the employee during the preceding month.

23.1.3 Contributions are to be made as above while employees are in receipt of accident make up pay.

23.2 Qualifying period

23.2.1 Existing employees who have been employed for at least four consecutive weeks from the commencement of employment shall have the contributions paid on their behalf in accordance with the provisions of this clause.

23.2.2 All employees shall have superannuation contributions paid to HESTA or another agreed fund from the commencement of employment after the expiration of the qualifying period.

23.3 Definition of ordinary pay

23.3.1 **Ordinary pay** means remuneration for a workers weekly number of hours of work calculated at the ordinary time rate of pay and in addition shall include:

23.3.1(a) Cash value of any deduction for board and lodging;

23.3.1(b) Overaward payments for ordinary hours of work;

23.3.1(c) Shift work premium;

23.3.1(d) Saturday and Sunday premiums, where they are part of ordinary work;

23.4 Intermittent employees

23.4.1 For the purposes of this clause intermittent employee means intermittent employee as defined in clause 8 - Definitions.

- 23.4.2** Intermittent employees are exempt from the provisions of this clause.
- 23.4.3** Provided that where such an employee earns \$450 or more in a calendar month a monthly contribution based on 23.3 shall be paid to HESTA or another agreed fund.
- 23.4.4** Provided that where such an employee earns \$3000 or more per year an annual contribution based on 23.1 shall be paid to HESTA or another agreed fund. Contributions made under this paragraph shall be calculated on ordinary pay to 30 June each year.

23.5 Transmission of business

- 23.5.1** Where a business is **transmitted** from one employer (the **transmittor**) to another employer (the **transmittee**) an employee who worked with the transmittor shall be entitled to count such service with the transmittor as service with the transmittee for the purposes of this clause provided that the service occurred in the relevant twelve month period.
- 23.5.2** The contribution to HESTA or another agreed fund shall be as per the requirements of the Superannuation Guarantee Levy legislative requirements

PART 5 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK

24. HOURS

24.1 Health and allied services employees

24.1.1 The hours for an ordinary week's work shall be 38 or an average of 38 per week over a fortnight or a four week period and shall be worked either:

24.1.1(a) over five days in shifts of not more than eight hours each; or

24.1.1(b) in a fortnight of 76 hours in ten shifts of not more than eight hours each; or

24.1.1(c) in 152 hours per four week period to be worked as nineteen shifts of not more than eight hours each.

24.1.2 By mutual agreement between the employer and employee the 38 hours for an ordinary weeks work may be in ten hour shifts over a five week period:

24.1.2(a) in four days of shifts not more than ten hours each;

24.1.2(b) in a fortnight of 76 hours in eight shifts of not more than ten hours each.

24.1.3 Provided than no employee shall be required to work more than six consecutive periods of ordinary duty without 24 hours off duty unless there are exceptional circumstances:

24.1.3(a) With the exception of time occupied in having meals and one additional break, if same is required by the employer the work of each shift shall be continuous.

24.1.3(b) Provided further that notwithstanding anything else contained in this award, an employee who works more than six consecutive periods of ordinary duty without 24 hours off duty shall be paid for the seventh and any further consecutive period of ordinary duty worked at the rate of treble time until they have been given 24 hours off duty.

24.1.3(c) For the purposes of this award the working week shall commence at midnight on Sunday.

24.1.4 Notwithstanding anything contained elsewhere in this award, where by reason of legislation summer time is prescribed as being in advance of the standard time, the length of any shift:

24.1.4(a) commencing before the time prescribed pursuant to the relevant legislation for the commencement of a summer time period; and

24.1.4(b) commencing on or before the time prescribed pursuant to such legislation for the termination of a summer time period - shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the legislation.

24.1.4(c) In this clause the expressions **standard time** and **summer time** shall bear the meanings as are prescribed by legislation, and **legislation** shall mean the *Summer Time Act 1972* as amended or as substituted.

24.2 Medical laboratory technicians

24.2.1 The hours for an ordinary week's work shall be 38, or an average of 38 per week in a two or four week period, or by mutual agreement in a five week period in the case of an employee working ten hour shifts, and shall be worked either:

24.2.1(a) Subject to practicality, in 152 hours per four week period to be worked as nineteen shifts of eight hours each; or

24.2.1(b) By mutual agreement:

24.2.1(b)(i) in four days in shifts of not more than ten hours each;

24.2.1(b)(ii) otherwise, provided that the length of any ordinary shift shall not exceed ten hours.

24.2.2 Subject to the roster provisions, 80 hours may be worked in any two consecutive weeks, but not more than 50 ordinary hours may be worked in any one of such weeks.

24.2.2(a) Necessary consultation shall take place on the implementation of a 38 hour week.

24.2.2(b) In the absence of agreement on any significant matter either party may refer the matter to the Australian Industrial Relations Commission.

24.2.3 For all purposes the hourly rate is deemed to be the weekly rate prescribed in clause 18 - Rates of pay divided by 38, provided that where the averaging system is used by full-time employees, an employees ordinary wage for ordinary hours is deemed to be the weekly rate prescribed in clause 18 and shall be paid each week even though more or less than 38 ordinary hours are worked in that week. An employee shall accrue a credit for each day in which they work ordinary hours in excess of the daily average of seven hours 36 minutes. The credit is carried forward so that in each cycle an "accrued day off" is paid.

24.2.3(a) All paid leave accrues the credit in 24.2.3.

24.2.3(b) A paid leave day shall be identical to a worked day.

24.2.3(c) The deduction from leave credits shall be the same as the actual ordinary hours which would have been worked on that day.

24.2.4 An employee who is absent from ordinary duty on unpaid leave shall accrue the appropriate credit without pay for the accrued day off.

24.2.5 Notwithstanding anything contained elsewhere in this award, where by reason of legislation summer time is prescribed as being in advance of the standard time, the length of any shift:

24.2.5(a) Commencing before the time prescribed pursuant to relevant legislation for the commencement of a summer time period; and

24.2.5(b) Commencing on or before the time prescribed pursuant to such legislation for the termination of a summer time period:

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the legislation. In this clause the expressions **standard time** and **summer time** shall bear the same meaning as are prescribed by legislation, and **legislation** shall mean the *Summer Time Act 1972* as amended or substituted.

24.3 Scientists

24.3.1 The hours for a ordinary week's work shall be worked either:

24.3.1(a) in a week of five days in shifts of not more than seven hours and 36 minutes each; or

24.3.1(b) by mutual agreement in a week of four days in shifts of not more than ten hours each; or

24.3.1(c) by mutual agreement, provided that the length of any ordinary shift shall not exceed ten hours.

24.3.2 Subject to the roster provisions 80 hours may be worked in any two consecutive weeks, but not more than 50 ordinary hours may be worked in any of such weeks.

24.3.3 With the exception of time occupied in having meals, the work of each shift shall be continuous.

24.3.4 Notwithstanding anything contained elsewhere in this award, where by reason of legislation summer time is prescribed as being in advance of the standard time, the length of any shift:

24.3.4(a) commencing before the time prescribed pursuant to the relevant legislation for the commencement of a summer time period; and

- 24.3.4(b)** commencing on or before the time prescribed pursuant to such legislation for the termination of a summer time period - shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the legislation.
- 24.3.4(c)** In this clause the expressions **standard time** and **summer time** shall bear the meanings as are prescribed by legislation, and **legislation** shall mean the *Summer Time Act 1972* as amended or as substituted.

25. OVERTIME

25.1 Health and allied services employees

Subject to clause 25.1.1 an employer may require an employee to work reasonable overtime at overtime rates.

25.1.1 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

25.1.1(a) any risk to employee health and safety;

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

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

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

25.1.1(e) any other relevant matter.

25.1.2 When overtime work is necessary it shall wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive shifts.

25.1.3 The following rates shall apply for overtime:

25.1.3(a) In excess of the number of hours fixed as a days, a weeks, or fortnights work as the case may be - time and a half for the first two hours and double time thereafter;

25.1.3(b) As overtime outside a spread of twelve hours from the commencement of the last previous rostered period of duty provided that the overtime is not continuous with the next succeeding period of duty - double time.

25.1.3(c) Outside a spread of nine hours from the time commencing work by an employee rostered to work broken shifts - time and a half, and outside a spread of twelve hours from the time of commencing work - double time.

25.1.3(d) Subject to 25.1.4 (time off in lieu), overtime worked shall be paid for, and an employee shall not be allowed or required to take time-off in lieu.

25.1.4 Time-off in lieu

25.1.4(a) In lieu of receiving payment for overtime, employees, may with the consent of the employer, take time-off for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred. Time in lieu shall be taken at a time agreed to between employer and employee within 28 days of the overtime being worked.

- 25.1.4(b)** Any accrual of such leave that extended beyond 28 days shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.
- 25.1.4(c)** For the purposes of this clause, in accruing or calculating payment of overtime, each period of overtime shall stand alone.
- 25.1.4(d)** An employee (other than a casual employee) who works so much overtime between the termination of their last previous rostered ordinary hours of duty and the commencement of their next succeeding rostered period of duty that they would not have at least ten consecutive hours off duty between those times, shall, subject to this clause, be released after completion of such overtime until they have had ten consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- 25.1.4(e)** If on the instructions of the employer, an employee resumes or continues work without having had such ten consecutive hours off duty they shall be paid at the rate of double time until they are released from duty for such rest period and they shall then be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- 25.1.4(f)** If the finishing time for a period of overtime is at a time when reasonable means of transport are not available for the employee to return to their place of residence the employer shall provide adequate transport free of cost to the employee.

25.2 Medical laboratory technicians

Subject to clause 25.2.1 an employer may require an employee to work reasonable overtime at overtime rates.

- 25.2.1.** An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - 25.2.1(a)** any risk to employee health and safety;
 - 25.2.1(b)** the employee's personal circumstances including any family responsibilities;
 - 25.2.1(c)** the needs of the workplace or enterprise;
 - 25.2.1(d)** the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - 25.2.1(e)** any other relevant matter.
- 25.2.2** Only authorised overtime shall be paid for and the following rates of overtime shall apply:

- 25.2.2(a)** In excess of ordinary hours work on any one day - time and one half for the first two hours and double time thereafter.
- 25.2.2(b)** Outside a spread of twelve hours from the commencement of the rostered period of duty - double time.
- 25.2.2(c)** By mutual agreement with the employer, an employee shall be allowed to take time in lieu of overtime.
- 25.2.2(d)** Any trainee may, due to medical emergency, be required to work reasonable overtime or shift duty at the discretion of the employer. Such overtime or shift duty shall be subject to the rates and/or allowances provided for elsewhere in this award.

25.3 Scientists

Subject to clause 25.3.1 an employer may require an employee to work reasonable overtime at overtime rates.

25.3.1 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- 25.3.1(a)** any risk to employee health and safety;
- 25.3.1(b)** the employee's personal circumstances including any family responsibilities;
- 25.3.1(c)** the needs of the workplace or enterprise;
- 25.3.1(d)** the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- 25.3.1(e)** any other relevant matter.

25.3.2 Only authorised overtime shall be paid for and the following rates of overtime shall apply:

- 25.3.2(a)** In excess of ordinary hours work on any one day - time and one half for the first two hours and double time thereafter.
- 25.3.2(b)** Outside a spread of twelve hours from the commencement of the rostered period of duty - double time.
- 25.3.2(c)** Except as provided for in 25.3.2(d), overtime shall be paid for and a Scientist shall not be allowed to take time-off in lieu.

25.3.2(d) A Scientist may elect in lieu of payment of overtime, to take time-off equivalent to the time worked at the appropriate penalty rate at a time mutually agreed between the employer and the employee, in which case the time-off shall be granted within two weeks of working the overtime, or by mutual agreement between the employer and the employee, a Scientist may elect in lieu of payment of overtime to take time-off equivalent to the time worked at ordinary time in conjunction with their annual leave.

25.3.2(e) In the event that a Scientist elects in lieu of payment of overtime to take time-off in conjunction with their annual leave, such time will not be subject to the annual leave loading.

25.3.3 The provisions of this clause shall not apply to a Scientist - Director or Deputy Director.

25.3.4 When overtime work is necessary, it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive shifts.

25.3.5 An employee (other than a casual employee) who works so much overtime between the termination of their last previous rostered ordinary hours of duty and the commencement of their next succeeding rostered period of duty that they would not have at least ten consecutive hours off duty between those times, shall, subject to this subclause, be released after completion of such overtime worked until they have had ten consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such an absence.

25.3.6 If on the instruction of the employer such an employee resumes or continues work without having had ten consecutive hours off duty then the employee shall be paid at the rate of double time until they have been released from duty for a ten hour rest period and they shall be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.

26. SHIFT WORK

26.1 Health and allied services employees

- 26.1.1** In addition to any other rates prescribed elsewhere in this award an employee whose rostered hours of ordinary duty finish between 6.00 p.m. and 8.00 a.m. or commence between 6.00 p.m. and 6.30 a.m. shall be paid an amount equal to 2.77 per cent of the weekly rate of pay for a Cleaner 1st year of experience as specified in clause 18 of this award per rostered period of duty.
- 26.1.2** Provided that in the case of an employee working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5.00 a.m. they shall be paid for any such periods of duty an amount equal to 4.43 per cent of the said weekly rate and provided further that in the case of an employee permanently working on any such rostered hours of ordinary duty they shall be paid for any such period of duty an amount equal to 5.54 per cent of the said rate. "Permanently working" shall mean working for any period in excess of four consecutive weeks.
- 26.1.3** Provided further that in the case of an employee who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more than from that of the first they shall be paid an amount equal to 4.43 per cent of the said weekly rate on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.
- 26.1.4** Notwithstanding the provisions of subclause 26.1.3 above the change of shift allowance is not payable:
- 26.1.4(a)** Where an employer agrees to a request in writing made on behalf of one or more of their employees for changes in shifts.
 - 26.1.4(b)** Where there is an intervening period of more than 48 hours off duty, inclusive of all leave, weekends, accrued days off, rostered days off and public holidays.
 - 26.1.4(c)** The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent being disregarded.
- 26.1.5** All rostered time of ordinary duty performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and a half.
- 26.1.6** Provided that the following rate of payment shall be made where the Saturday or Sunday duty involves:
- 26.1.6(a)** Work in excess of the prescribed rostered hours - double time for the excess period;
 - 26.1.6(b)** Work performed by a worker of broken shifts outside a spread of nine hours from the time of commencing work - time and three-quarters, and outside a spread of twelve hours from the time of commencing work - double time.

26.2 Medical laboratory technicians

- 26.2.1** In addition to any other rates prescribed elsewhere in this award an employee whose rostered hours of ordinary duty finish between 6.00 p.m. and 8.00 a.m. or commence between 6.00 p.m. and 6.30 a.m. shall be paid an amount equal to 2 1/2 per cent of the rate applicable to first year of experience after qualification for that employee per rostered period of duty.
- 26.2.2** Provided that in the case of an employee working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5.00 a.m. they shall be paid for any such periods of duty an amount equal to 4 per cent of the rate applicable to the first year of experience after qualification for that employee, and provided further that in the case of an employee permanently working on any such rostered hours of ordinary duty they shall be paid for any such period of duty an amount equal to 5 per cent of the rate applicable to the first year of experience after qualification for that employee.
- 26.2.3** **Permanently working** shall mean working for any period in excess of four consecutive weeks.
- 26.2.4** Provided further that in the case of an employee who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first they shall be paid an amount equal to 4 per cent of the rate applicable to first year of experience after qualification for that employee on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.
- 26.2.5** The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent being disregarded.
- 26.2.6** All rostered time of ordinary duty performed between midnight on Friday and midnight on Saturday shall be paid for at the rate of time and a half.
- 26.2.7** All rostered time of ordinary duty performed between midnight on Saturday and midnight on Sunday shall be paid for at the rate of time and a half.
- 26.2.8** Where Saturday or Sunday duties are required to be carried out in excess of the week's work such duties are to be paid at the rate of double time.
- 26.2.9** Any re-call to duty on a Saturday or Sunday shall be paid in accordance with 29.2.3(a).
- 26.2.10** By mutual agreement with the employer an employee shall be allowed to take time-off in lieu of overtime.

26.3 Scientists

- 26.3.1** In addition to any other rates prescribed elsewhere in this award an employee whose rostered hours of ordinary duty finish between 6.30 p.m. and 6.30 a.m. or commence between 6.30 p.m. and 6.30 a.m. shall be paid an amount equal to 2 1/2 per cent of the weekly rate applicable to a Scientist Grade 1 1st Year after qualifications for that employee per rostered period of duty.
- 26.3.2** Provided that in the case of an employee working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5.00 a.m. they shall be paid for any such periods of duty an amount equal to 4 per cent of the rate applicable to the first year of experience Scientist Grade 1 after qualification for that employee, and provided further that in the case of an employee permanently working on any such rostered hours of ordinary duty they shall be paid for any such period of duty an amount equal to 5 per cent of the rate applicable to the first year of experience Scientist Grade 1.
- Permanently working** shall mean working for any period in excess of four consecutive weeks.
- 26.3.3** Provided further that in the case of an employee who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first they shall be paid an amount equal to four per cent of the rate applicable to first year of experience Scientist Grade 1 in the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.
- 26.3.4** The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent to be disregarded.
- 26.3.5** Where Saturday or Sunday duties are required to be carried out in excess of the ordinary week's work, such duties shall be paid for at the rate of double time.
- 26.3.6** All rostered time of ordinary duty performed on a Saturday or on a Sunday shall be paid for at the rate of time and a half.
- 26.3.7** If the Saturday or Sunday duty involves duty in excess of the prescribed rostered hours, the excess period shall be paid for at the rate of double time for Saturday and Sunday.
- 26.3.8** The provisions of this clause shall not apply to a Scientist-Director or Deputy Director.

27. MEAL BREAKS

27.1 Health and allied services employees and scientists

- 27.1.1** Except as provided in 27.1.2, a meal interval of not less than 30 minutes and not more than 60 minutes shall be allowed each employee during each shift. Such meal interval shall not be counted as time worked.
- 27.1.2** Each employee on night duty who is not relieved from duty (and on call) during the rostered meal interval shall be granted a meal interval of not less than twenty minutes to be commenced after completing three hours and not more than five hours of duty. Such time to be counted as time worked.
- 27.1.3** The above crib time arrangement may also be adopted in any case where there is mutual agreement between the employer and employee.

27.2 Medical laboratory technicians

- 27.2.1** A meal interval of not more than 60 minutes shall be allowed during each rostered period of duty to employees other than those working shift duty which shall not be counted as time worked.
- 27.2.2** A meal interval of not more than 30 minutes per shift shall be allowed whenever possible for employees rostered for shift duty and shall be counted as time worked whether or not the meal interval is taken.

28. REST PERIOD

28.1 Health and allied services employees

Employees shall be entitled to a ten minute rest interval in each four hours worked or part thereof being greater than one hour. The rest break shall be at a time suitable to the employer and shall be counted as time worked.

28.2 Medical laboratory technicians and scientists

At a time suitable to the employer two rest periods of ten minutes shall be given to each employee during each eight hour period of duty and shall be counted as time worked.

29. ONCALL/RECALL

29.1 Health and allied services employees

- 29.1.1** All employees required to be on call or who return to duty when off duty shall be paid, in addition to any other amount payable, a sum equal to 2.77% of the 1st year of experience rate of pay of a cleaner in 18.1 of this award, calculated to the nearest five cents, portions of a cent being disregarded, per period of twelve hours or part thereof.
- 29.1.2** Any period of overtime involving a recall to duty during an off duty period and which is not continuous with the next succeeding rostered period of duty shall be paid at a minimum of three hours at the appropriate rate.

29.2 Medical laboratory technicians

- 29.2.1** An on call allowance of 2.62% of the rate for Medical imaging technologist grade 1 Year 1 shall be paid to an employee in respect to any 24 hour period or part thereof during which the employee is on call during the period commencing from the time of finishing ordinary duty on Monday and the termination of ordinary duty on Friday.
- 29.2.2** The allowance shall be 5.24% in respect to any other 24 hour period or part thereof or any public holiday or part thereof.
- 29.2.3** In the event of an employee being recalled to duty for any period during an off-duty period such employee shall be paid from the time of receiving the recall until the time of returning to the place from which they were recalled with a minimum of two hours payment for each recall, at the following rates:
- 29.2.3(a)** within a spread of twelve hours from the commencement of the last previous period of ordinary duty - time and one half; and
 - 29.2.3(b)** outside a spread of twelve hours from the commencement of the last period of ordinary duty - double time.
- 29.2.4** When re-call work is necessary it should be so arranged that employees have at least eight consecutive hours off duty between midnight and the commencement of the next period of ordinary duty.
- 29.2.5** An employee who works so much re-call between midnight and the commencement of the next succeeding rostered period of duty, that they would not have at least eight consecutive hours off duty between those times, shall subject to this subclause, be released after completion of such re-call worked until they have had eight consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

29.2.6 If on the instructions of the employer, such an employee resumes or continues work without having had eight consecutive hours off duty they shall be paid at the rate of double time until they are released from duty for such rest period and they shall then be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence. If an employee resumes work of their own volition overtime will be computed in terms of clause 25 - Overtime. An employee who resumes work voluntarily shall be entitled without loss of pay to attend to ablution and sustenance matters.

29.3 Scientists

29.3.1 An on-call allowance of two and a half per cent of the rate for the Scientist grade 1 Year 2 shall be paid to an employee in respect to any 24 hour period or part thereof during which the employee is on call during the period commencing from the time of finishing ordinary duty on Monday and the termination of ordinary duty on Friday. The allowance shall be 5% in respect to any other 24 hour period or part thereof or any public holiday or part thereof.

29.3.2 A Scientist Director or Deputy Director required to be on call outside ordinary hours shall be paid an allowance equal to 10% of their weekly wages for each week during which they are required. Provided that a Scientist Director or Deputy Director not already on call but who substitutes themselves on the normal on call roster of the laboratory concerned shall be paid in accordance with the provisions of 29.3.1.

29.3.3 In the event of an employee being recalled to duty for any period during an off-duty period such employee shall be paid from the time of receiving the recall until the time of finishing such recall duty with a minimum of two hours payment for each such recall, at the following rates:

29.3.3(a) Within a spread of twelve hours from the commencement of the last period of ordinary duty - time and a half.

29.3.3(b) Outside a spread of twelve hours from the commencement of the last previous period of ordinary duty - double time.

29.3.3(d) An employee (other than a casual employee) who works so much recall between midnight and the commencement of their next succeeding rostered period of duty that they would not have had at least eight consecutive hours off duty between those times, shall subject to this subclause, be released after completion of such recall worked until they have had eight consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

29.3.3(e) If on the instructions of their employer such an employee resumes or continues work without having had such eight consecutive hours off duty they shall be paid at the rate of double time until they are released from duty for such a rest period and the employee shall then be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such an absence. No employee shall present for duty on a voluntary basis unless they have had eight consecutive hours (within the meaning of this subclause) off duty.

29.3.4 In the event of any employee finishing any period of overtime at a time when reasonable means of transport are not available for the employee to return to their place of residence the employer shall reimburse the employee for the cost of obtaining transport home.

29.3.5 No employee shall be permitted to be on call in the 24 hour period prior to any change of shift.

PART 6 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

30. ANNUAL LEAVE

30.1 Health and allied services employees

30.1.1 Employees other than casuals shall be entitled to a minimum four weeks annual leave on ordinary pay as defined in clause 8 - Definitions and shall normally be taken in four consecutive weeks or if the employee and employer agree in two separate periods. Provided that the employee and employer come to a mutually agreed arrangement within the terms of 30.1.9.

30.1.2 An employee who during the yearly period of accrual for annual leave is rostered as part of their ordinary duties on ten or more weekends for four hours or more, shall be entitled to one weeks annual leave in addition to that prescribed in 30.1.1.

[30.1.3 substituted by [PR969993](#) ppc 16Dec05]

30.1.3 Annual leave shall be given by the employer and taken by the employee within six months of when the date of entitlement to the leave becomes due. The employer shall give each worker at least seven days notice of the date from which their annual holiday shall be taken. Provided that in order to assist employees in balancing their work and family responsibilities, an employer may elect, with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date of entitlement.

30.1.4 Where weekly hours are not fixed the normal weekly hours shall be the average weekly number of hours worked during the period in respect of which the right to annual leave accrues.

30.1.4(a) Except where an employee has entitlements due to them under 13.8 relating to termination of employment, payment shall not be made in lieu of any period of annual holiday.

30.1.5 Employees under this award who become entitled to annual leave shall be paid 17.5 per cent loading on their wage specified in clause 18 -Rates of pay for the period of annual leave.

30.1.5(a) Provided that where an employee would have received shift penalties or Saturday and/or Sunday penalties prescribed in 21.4 and clause 26 - Saturday and Sunday work had they not been on annual leave and such shift loadings would have entitled the employee to a greater amount than under 30.1.5, then the shift loadings shall be paid to the employee in lieu of the loading.

30.1.6 The employer shall pay an employee for all ordinary hours worked preceding the period of leave and all annual leave entitlements for holidays taken in accordance with 30.1.1 and 30.1.2 prior to the employee commencing their period of annual leave.

30.1.7 Where a public holiday listed under clause 34 - Public holidays of this award occurs during any period of annual leave for which the employee is entitled the holiday shall be increased by one day in respect of that public holiday.

30.1.8 When the system of working provides for the taking of accrued days off the maximum number of accrued days off shall be thirteen in any calendar year, provided that at least one of those accrued days will be taken in conjunction with a period of annual leave for which no additional payment is to be made.

30.1.9 By mutual arrangement the employer and employee may agree to an employee:

30.1.9(a) Taking holidays partly or totally in advance of them becoming due. Provided that further entitlement shall not begin to accrue until the completion of the year in respect of which the holiday has been taken.

[30.1.9(b) substituted by [PR969993](#) ppc 16Dec05]

30.1.9(b) Annual leave may be taken in single day periods not exceeding ten days in any calendar year at a time or times agreed between the employer and the employee.

30.1.10 Annual leave taken under 30.1.9(a) shall be exempt from the provisions of 30.1.6 and all payment shall be in the next pay period immediately after the leave.

30.1.10(a) Where an employee with outstanding annual leave entitlements under this clause is terminated they shall be paid for all outstanding annual entitlements including pro rata entitlements up to the date of termination.

30.1.10(b) Where an employee is terminated within the provisions of 13.8 they shall be paid a loading of 1/12th in addition to the ordinary time pay entitlements.

30.1.10(c) Provided that where an employee has taken annual leave under 30.1.9(a); and

30.1.10(c)(i) the employment of the worker is terminated before they have completed the year of employment in respect of which the annual leave was taken;

30.1.10(c)(ii) the sum paid by the employer to the employee as ordinary pay for the period of annual leave taken in advance exceeds the sum which the employer is required to pay to the worker upon termination or closure; and

30.1.10(c)(iii) the employer shall not be liable to make any payment to the employee under 30.1.10(a) and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon termination of employment.

- 30.1.10(d)** Provided that an employee working shifts whose employment is terminated at the end of a period of employment which is less than one year from the date of commencement, or the date when the employee last became entitled to annual leave shall be paid an amount equal to 1/48th of their ordinary pay in respect of that period of employment.
- 30.1.11** A period of accrual for annual leave and continuity of employment shall not be broken by:
- 30.1.11(a)** any annual leave or long service leave taken;
 - 30.1.11(b)** any interruption to employment by the employer seeking to avoid annual leave or long service leave obligations; obligations
 - 30.1.11(c)** any absence from work of not more than fourteen days per annum on account of sickness or accident.
- 30.1.12** However, while continuity of employment shall not be broken, a period of accrual will have to be extended to take account of:
- 30.1.12(a)** any absence for leave (other than annual or long service leave) imposed or agreed to by the employer; and
 - 30.1.12(b)** any absence on any other account not involving termination of employment.
- 30.1.13** Where the employer intends to temporarily close or reduce establishment size for purpose of allowing annual leave then the employer shall give four weeks notice of that intention to any employee affected by this provision.
- 30.1.13(a)** Any employee who at the date of closing is entitled to annual leave shall commence annual leave from the date of closing and shall be paid an additional loading of 1/12th of their ordinary pay for that period of leave.
 - 30.1.13(b)** Any employee who at the date of closing is not entitled to annual leave shall be given leave without pay from the date of closing and paid 1/12th of their ordinary pay for the period since the commencement of their employment with the employer or the accrual of their last annual holiday (whichever is the latter) up to the date of closing together with any entitlement under clause 34 - Public holidays.
 - 30.1.13(c)** In this subclause date of closing in relation to each worker means the first day of their annual holiday or leave pursuant to this subclause.
 - 30.1.13(d)** The next twelve month qualifying period for annual leave shall commence on the date of closing.

30.2 Medical laboratory technicians

30.2.1 Period of leave

An employee who has been in the service of the same employer for a period of not less than twelve months shall be granted three weeks' leave without deduction of pay in respect of an annual holiday taken prior to 1 January 1975, and in respect of annual holidays falling due and taken on or after 1 January 1975, to 152 hours leave on ordinary pay.

30.2.2 Annual leave exclusive of public holidays

The annual leave prescribed in 30.2.1 shall be exclusive of any of the holidays prescribed by clause 34 - Public holidays and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

30.2.3 Leave to be taken

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by 30.2.7, payment shall not be made or accepted in lieu of annual leave.

30.2.4 Time of taking leave

[30.2.4 substituted by [PR969993](#) ppc 16Dec05]

30.2.4(a) Annual leave shall be given at a time determined by mutual agreement between the employer and the employee within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee. Provided that in order to assist employees in balancing their work and family responsibilities, an employer may elect, with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date of entitlement.

30.2.4(b) Annual leave may be taken in single day periods not exceeding ten days in any calendar year at a time or times agreed between the employer and the employee.

30.2.5 Leave allowed before due date

30.2.5(a) An employer may allow annual leave to an employee before the right thereto has accrued due, but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the expiration of the twelve months in respect of which annual leave had been taken before it accrued.

30.2.5(b) Where leave has been granted to an employee pursuant to this subclause before the right has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' continuous service in respect of which the leave was granted and the sum paid by the employer to the employee as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay under 30.2.7 the employer shall not be liable to make any payment to the employee under 30.2.7 and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon termination of the employment.

30.2.6 Payment for period of leave

Each employee before going on leave shall be paid for the period of such leave provided the period is not less than one week.

30.2.7 Proportionate leave

Where the employment of any employee is terminated at the end of a period of employment of less than twelve months the employer shall forthwith pay to the employee, in addition to all other amounts due to him, an amount equal to 3/49ths of his/her ordinary pay for that period of employment prior to 1 January 1974, and an amount equal to 1/12th of his/her ordinary pay for that period thereafter.

30.2.8 Weekend worker

30.2.8(a) For the purposes of this award **weekend worker** shall mean any employee who in any one year of employment works portion of his ordinary hours on a weekend.

30.2.8(b) A weekend worker who works on ten or more weekends during the yearly period in respect of which his leave accrues shall be allowed one week's leave additional to the leave hereinbefore prescribed.

30.2.8(c) 30.2.8(a) and 30.2.8(b) shall not apply to any weekend on which the employee works four hours or less.

30.2.9 Annual leave loading

A loading of 17.5% shall be paid at the time annual leave is taken. Loading calculated according to this subclause shall be payable on proportionate leave calculated according to this clause.

30.2.10 Sickness during annual leave

Where an employee becomes sick whilst on annual leave for a period of not less than five days on which they would otherwise have worked, and immediately forwards to the employer a certificate of a legally qualified medical practitioner, then the number of days not less than five specified in this certificate shall be deducted from any sick leave entitlement standing to the employee's credit, and shall be re-credited to their annual leave entitlement.

30.3 Scientists

30.3.1 Period of leave

30.3.1(a) An employee who has been in the service of the same employer for a period of not less than twelve months shall be granted 152 hours leave on ordinary pay.

30.3.1(b) The annual leave prescribed in 30.3.1 shall be exclusive of any of the holidays prescribed by clause 34 - Public holidays and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such a day had not been a holiday.

30.3.2 Leave to be taken

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by 30.3.6, payment shall not be made or accepted in lieu of annual leave.

30.3.3 Time of taking leave

[30.3.3 substituted by [PR969993](#) ppc 16Dec05]

30.3.3(a) Annual leave shall be given at a time determined by mutual award between the employer and the employee within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee. Provided that in order to assist employees in balancing their work and family responsibilities, an employer may elect, with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date of entitlement.

30.3.3(b) Annual leave may be taken in single day periods not exceeding ten days in any calendar year at a time or times agreed between the employer and the employee.

30.3.4 Leave allowed before due date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where leave is taken in such case a further period of annual leave shall not commence to accrue until after the expiration of the twelve months in respect of which annual leave had been taken before it accrued. Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' continuous service in respect of which the leave was granted and the sum paid by the employer to the employee as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay under 30.3.6 the employer shall not be liable to make any payment to the employee under 30.3.6 and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon termination of employment.

30.3.5 Payment for period of annual leave

Each employee before going on leave shall be paid for the period of leave provided the period of leave is not less than one week.

30.3.6 Proportionate leave

- 30.3.6(a)** Where the employment of any employee is terminated at the end of the period of employment of less than twelve months, the employer shall forthwith pay to the employee, in addition to all other amounts due to the employee, an amount equal to 1/12th of the employees ordinary pay for that period.
- 30.3.6(b)** Where the employment of an employee who has become entitled to one or more periods of annual leave provided by this award is terminated, the employer shall be deemed to have given all of such leave (except so much, if any, as has already been taken) to the employee as from the date of the termination of the employment, and shall forthwith pay to the employee, in addition to all other amounts due to the employee, the employee's ordinary pay for the period of that leave.
- 30.3.6(c)** 30.3.6(b) applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the employee concerned continues to be entitled (apart from this clause) to take it, and so applies as if the employees right to take it had accrued immediately before the date of the termination of the employee's employment.
- 30.3.6(d)** Nothing in 30.3.6(b) or 30.3.6(c) affects the obligation of an employer to give or an employee to take, annual leave in accordance with this award.

30.3.7 Weekend worker

30.3.7(a) Additional leave - full-time:

- 30.3.7(a)(i)** For all purposes of this clause in addition to the leave prescribed a full-time employee as defined required to work and who worked ordinary hours as prescribed under 18.3 on weekdays and on weekends throughout the qualifying twelve-month period of service shall be allowed 38 working hours leave.
- 30.3.7(a)(ii)** A full-time employee with twelve months continuous service so engaged for part of the qualifying twelve-month period shall have the leave prescribed in 30.3.1 increased by three hours 48 minutes for each month of weekend work.
- 30.3.7(a)(iii)** A full-time employee so engaged for part of the qualifying twelve-month period whose employment is terminated shall receive in addition to other amounts due in lieu of annual leave a pro rata payment based on the amount payable under this subclause for the full qualifying twelve month period engaged as a weekend worker.
- 30.3.7(a)(iv)** This subclause shall not apply to any weekend on which the employee works four hours or less.

30.3.7(b) Part-time employees only - Sunday workers:

For the purposes of this award **Sunday Workers'** shall mean any employee who in any one year of employment works portion of their ordinary hours on a Sunday. A Sunday Worker who works on ten or more Sundays during the yearly period of which their leave accrues shall be allowed 38 hours leave additional to the leave hereinbefore prescribed. This subclause shall not apply to any Sunday on which the employee works four hours or less.

30.3.8 Annual leave loading

An employee entitled to annual leave shall be paid an annual leave loading of 17.5% of the ordinary weekly rate of pay for the classification at which the employee is employed at the commencement of their annual leave, provided that the maximum annual allowance payable shall be the base salary for Medical Scientist Grade 3, Year 2.

Provided that where an employee would have received shift penalties or Saturday and/or Sunday penalties prescribed in 26 of this Award had they not been on annual leave and such shift loadings would have entitled the employee to a greater amount than under 30.1.5, then the shift loadings shall be paid to the employee in lieu of the loading.

30.3.9 Termination

The loading calculated according to 30.3.8 shall be payable on proportionate leave calculated according to 30.3.6.

30.3.10 Sickness during annual leave

30.3.10(a) Where an employee becomes sick whilst on annual leave for a period of not less than five days on which they would otherwise have worked, and immediately forwards to the employer a certificate of a legally qualified medical practitioner, then the number of days not less than five specified in the certificate shall be deducted from any sick leave entitlement standing to the employee's credit, and shall be re-credited to their annual leave entitlement.

30.3.10(b) The amount of annual leave loading received for any period of annual leave converted to sick leave in accordance with 30.3.10(a) shall be deducted from any future entitlement to annual leave loading, or if the employee resigns, from termination pay.

31. PERSONAL LEAVE

[31 substituted by [PR969993](#) ppc 16Dec05]

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 12.4.

31.1 Definitions

The term **immediate family** includes:

- 31.1.1** spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- 31.1.2** child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

31.2 Amount of paid personal leave

31.2.1 Paid personal leave is available to an employee, when they are absent:

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

31.2.2 The amount of personal leave to which a full-time employee is entitled depends on how long they have worked for the employer and accrues as follows:

31.2.2(a) 91.2 hours will be available in the first year of service;

31.2.2(b) 106 hours and 24 minutes will be available per annum in the second, third and fourth years of service.

31.2.2(c) 159 hours and 36 minutes will be available in the fifth and following years of service

31.2.3 In any year personal leave accrues by the balance of that year's untaken personal leave.

31.3 Personal leave for personal injury or sickness

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

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

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

31.4.2 By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in 31.4.1, beyond the limit set out in 31.4.1. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

31.5 Evidence supporting claim

31.5.2 The provisions of sub clauses 31.4.1 and 31.4.2 are subject to the provision that such illness is certified by a legally qualified medical practitioner (or a statutory declaration signed by an employee shall be deemed to be satisfactory evidence of sickness) and evidence thereof, if required by the employer is produced within three days of such a request.

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

31.6 Unpaid personal leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of 31.5 and 31.6 are met.

31A. BEREAVEMENT LEAVE

[31A inserted by [PR969993](#) ppc 16Dec05]

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 30.9.

31A.1 Paid leave entitlement

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

31A.2 Proof of death must be provided to the satisfaction of the employer, if requested.

31A.3 Unpaid bereavement leave

31A.4. Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to four days per annum unpaid bereavement leave.

32. PARENTAL LEAVE

[32 substituted by [PR969993](#) ppc 16Dec05]

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

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

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

- (a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
- (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

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

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

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

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

32.1 Definitions

32.1.1 For the purpose of this clause **child** means a child of the employee under school age or a child under school age who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

32.1.2 Subject to 32.1.3, in this clause, **spouse** includes a de facto or former spouse.

32.1.3 In relation to 32.5, spouse includes a de facto spouse but does not include a former spouse.

32.2 Basic entitlement

- 32.2.1** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- 32.2.2** Subject to 32.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 32.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - 32.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

32.3 Maternity leave

- 32.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 32.3.1(a)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;
 - 32.3.1(b)** of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.
- 32.3.2** When the employee gives notice under 32.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 32.3.3** An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 32.3.4** Subject to 32.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- 32.3.5** Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

32.3.6 Special maternity leave

32.3.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

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

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

32.3.7 Where leave is granted under 32.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

32.4 Paternity leave

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

32.4.1(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

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

32.4.1(c) except in relation to leave taken simultaneously with the child's mother under 32.2.2(a), 32.2.2(b) and 32.4.1(a) a statutory declaration stating:

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

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

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

32.4.2 The employee will not be in breach of 32.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

32.5 Adoption leave

- 32.5.1** The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 32.5.2** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
- 32.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
 - 32.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - 32.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 32.5.3** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 32.5.4** Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- 32.5.5** An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 32.5.6** An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

32.6 Variation of period of parental leave

Where an employee takes leave under 32.9.1 or 32.10.1(b), unless otherwise agreed between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements.

32.7 Parental leave and other entitlements

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

32.8 Transfer to a safe job

32.8.1 Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

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

32.9 Returning to work after a period of parental leave

32.9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

32.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 32.8, the employee will be entitled to return to the position they held immediately before such transfer.

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

32.10 Right to request

32.10.1 An employee entitled to parental leave pursuant to the provisions of clause 32.2 may request the employer to allow the employee:

32.10.1(a) to extend the period of simultaneous unpaid parental leave provided for in clauses 32.2.2(a) and 32.2.2(b) up to a maximum of eight weeks;

32.10.1(b) to extend the period of unpaid parental leave provided for in clause 32.2.1 by a further continuous period of leave not exceeding 12 months;

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

to assist the employee in reconciling work and parental responsibilities.

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

32.10.3 Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 32.10.1(b) and 32.10.1(c) must be recorded in writing.

32.10.4 Request to return to work part-time

Where an employee wishes to make a request under 32.10.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

32.11 Communication during Parental Leave

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

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

32.11.1(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

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

32.11.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 32.11.1.

32.12 Replacement employees

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

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

33. LONG SERVICE LEAVE

33.1 Health and allied services employees

33.1.1 Entitlement

- 33.1.1(a)** All persons employed under this award shall be entitled to long service leave as hereinafter provided.
- 33.1.1(b)** An employee shall be entitled to long service leave with pay, in respect of continuous service with the employer, in accordance with the provisions of this clause.
- 33.1.1(c)** An employee shall have the following entitlement to long service leave.
- 33.1.1(c)(i)** On the completion by the employee of fifteen years' continuous service - thirteen weeks' long service leave and thereafter an additional 4-1/3 weeks long service leave on the completion of each additional five years' service.
- 33.1.1(c)(ii)** In addition, in the case of an employee who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the employee, an amount of long service leave equal to one sixtieth of the period of their service since the last accrual of entitlement to long service leave under 33.1.1(c)(i).
- 33.1.1(c)(iii)** In the case of an employee who has completed at least ten years' service, but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals one sixtieth the period of service.
- 33.1.1(c)(iv)** For the purpose of determining the entitlement of any male employee under any provisions of this clause in respect of a period of employment beginning before 31 December 1964 and ending after the said date, so much of that service as was completed before the said date shall be reduced by one quarter.

33.1.2 Service entitling to leave

- 33.1.2(a)** Subject to this subclause service shall also include all periods during which an employee was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- 33.1.2(b)** Where a business is transmitted from one employer (the **transmittor**) to another employer (the **transmittee**) an employee who worked with the transmittor and who continues in the service of the transmittee shall be entitled to count their service with the transmittor as service with the transmittee for the purposes of this clause.

- 33.1.2(c)** For the purposes of this clause service shall be deemed to be continuous notwithstanding:
- 33.1.2(c)(i)** the taking of any annual leave or long service leave;
 - 33.1.2(c)(ii)** any absence from work on account of illness or injury;
 - 33.1.2(c)(iii)** the taking of any other leave granted by the employer;
 - 33.1.2(c)(iv)** any interruption or ending of the employment by the employer if the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
 - 33.1.2(c)(v)** in the case of an employee performing duties in relation to assets of a particular kind, any absence from work arising solely because of a transfer assets from one employer to another employer;
 - 33.1.2(c)(vi)** any interruption arising directly or indirectly from an industrial dispute;
 - 33.1.2(c)(vii)** the dismissal of an employee, but only if the employee is re-employed within a period not exceeding three months after the dismissal;
 - 33.1.2(c)(viii)** the standing-down of the employee on account of slackness of trade;
 - 33.1.2(c)(ix)** if the employee is a woman, any absence from work in respect of her pregnancy for a period not exceeding twelve months or any longer period that may be specified in the relevant award or employment agreement;
 - 33.1.2(c)(x)** any other absence approved by the employer either before or after it occurs;
- 33.1.2(d)** In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in 33.1.2(c)(i) to 33.1.2(c)(v) of the last preceding paragraph shall be counted as part of the period of their service, but any interruption or absence of a kind mentioned in subparagraphs 33.1.2(c)(vi) to 33.1.2(c)(x) shall not be counted as part of the period of service unless it is so authorised in writing by the employer.
- 33.1.2(e)** The employer shall keep or cause to be kept a long service record for each employee, containing particulars of service, leave taken and payments made.

33.1.3 Payment in lieu of long service leave on the death of an employee

Where an employee who has completed at least ten years' service dies while still in the employ of the employer, the employer shall pay to such employee's personal representative a sum equal to the pay of such employee for one thirtieth of the period of the employee's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the employee.

33.1.4 Payment for period of leave

33.1.4(a) Payment to an employee in respect of long service leave shall be made in one of the following ways:

33.1.4(a)(i) In full in advance when the employee commences their leave; or

33.1.4(a)(ii) At the same time as payment would have been made if the employee had remained on duty; in which case payment shall, if the employee in writing so requires, be made by cheque posted to a specified address; or

33.1.4(a)(iii) In any other way agreed between the employer and the employee.

33.1.4(b) Where the employment of an employee is for any reason terminated before the employee takes any long service leave to which they are entitled or where any long service leave accrues to an employee pursuant to 33.1.1(c)(ii) the employee shall subject to the provisions of 33.1.4(c) be entitled to pay in respect of such leave as at the date of termination of employment.

33.1.4(c) Where any long service leave accrues to an employee pursuant to 33.1.1(c)(iii) the employee shall be entitled to pay in respect of such leave as at the date of termination of employment.

33.1.4(d) Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

33.1.5 Taking of leave

33.1.5(a) When an employee becomes entitled to long service leave such leave shall be granted by the employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such a date as is mutually agreed, provided that such leave is not to commence before the expiry of six months from the date of such determination.

33.1.5(b) Any long service leave shall be:

Inclusive of any public holiday or accrued day off occurring during the period when leave is taken.

33.1.5(c) If the employer and an employee so agree:

33.1.5(c)(i) the first six months long service leave to which an employee becomes entitled under this award may be taken in two or three separate periods; and

33.1.5(c)(ii) any subsequent period of long service leave to which the employee becomes entitled may be taken in two separate periods, but save as aforesaid long service leave shall be taken in one period.

33.1.5(d) An employer may by agreement with an employee grant long service leave to the employee before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten years' service.

Where the employment of an employee who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the employer may, from whatever remuneration is payable to the worker upon termination, deduct and withhold an amount equivalent to the amount paid to the employee in respect of the leave in advance.

33.1.6 Definitions

For the purposes of this clause the following definitions apply:

33.1.6(a) **Pay** means remuneration for an employee's normal weekly hours of work calculated at the employee's ordinary time rate of pay provided in clause 6 hereof at the time the leave is taken or (if the employee dies before the completion of leave so taken) as at the time of their death; and shall include the amount of any increase to the employee's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates provided that where accommodation is made available to an employee during their period of leave and where a deduction is made for the rental, such amount shall be deducted from the pay for the period of leave.

33.1.6(b) **Month** shall mean a calendar month.

33.1.6(c) **Transmission** includes transfer, conveyance, assignment or succession whether by award or by operation of law and **transmitted** has a corresponding interpretation.

33.2 Medical laboratory technicians and scientists

33.2.1 Entitlement

- 33.2.1(a)** All persons employed under this award shall be entitled to long service leave as hereinafter provided.
- 33.2.1(b)** An employee shall be entitled to long service leave with pay, in respect of continuous service with the employer, in accordance with the provisions of this clause.
- 33.2.1(c)** An employee shall have the following entitlement to long service leave:
- 33.2.1(c)(i)** on the completion by the employee of fifteen years' continuous service - six months' long service leave and thereafter an additional two months' long service leave on the completion of each additional five years' service;
 - 33.2.1(c)(ii)** in addition, in the case of an employee who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the employee, an amount of long service leave equal to one thirtieth of the period of their service since the last accrual of entitlement to long service leave under 33.2.1(c)(i); and
 - 33.2.1(c)(iii)** in the case of an employee who has completed at least ten years' service, but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals one thirtieth of the period of service.

33.2.2 Service entitling to leave

- 33.2.2(a)** Subject to this subclause service shall also include all periods during which an employee was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- 33.2.2(b)** Where a business is **transmitted** from one employer (the **transmittor**) to another employer (the **transmittee**) an employee who worked with the transmittor and who continues in the service of the transmittee shall be entitled to count their service with the transmittor as service with the transmittee for the purposes of this clause.
- 33.2.2(c)** For the purposes of this clause service shall be deemed to be continuous notwithstanding:
- 33.2.2(c)(i)** the taking of any annual leave or long service leave;

- 33.2.2(c)(ii)** any absence from work of not more than fourteen days in any year on account of illness or injury or if applicable such longer period as provided in 31.3;
 - 33.2.2(c)(iii)** any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
 - 33.2.2(c)(iv)** any absence on account of injury arising out of or in the course of the employment of the employee for a period during which payment is made under clause 22 - Accident pay;
 - 33.2.2(c)(v)** any leave of absence of the employee where the absence is authorised in advance in writing by the employer to be counted as service;
 - 33.2.2(c)(vi)** any interruption arising directly or indirectly from an industrial dispute;
 - 33.2.2(c)(vii)** any period of absence from employment between the engagement with one of the said employers and another provided it is less than the employee's allowable period of absence from employment. An employee's allowable period of absence from employment shall be five weeks in addition to the total period of paid annual and/or sick leave which the employee actually receives on termination or for which they are paid in lieu;
 - 33.2.2(c)(viii)** the dismissal of an employee if the employee is re-employed within a period not exceeding two months from the date of such dismissal;
 - 33.2.2(c)(ix)** any absence from work of a female employee for a period not exceeding twelve months in respect of any pregnancy;
 - 33.2.2(c)(x)** any other absence of an employee by leave of the employer, or on account of injury arising out of or in the course of their employment not covered by 33.2.2(c)(iv).
- 33.2.2(d)** In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in 33.2.2(c)(i) to 33.2.2(c)(v) of the last preceding paragraph shall be counted as part of the period of their service, but any interruption or absence of a kind mentioned in 33.2.2(c)(vi) to 33.2.2(c)(x) shall not be counted as part of the period of service unless it is so authorised in writing by the employer.
- 33.2.2(e)** The employer shall keep or cause to be kept a long service record for each employee, containing particulars of service, leave taken and payments made.

33.2.3 Payment in lieu of long service leave on the death of an employee

Where an employee who has completed at least ten years' service dies while still in the employ of the employer, the employer shall pay to such employee's personal representative a sum equal to the pay of such employee for one thirtieth of the period of the employee's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the employee.

33.2.4 Payment for period of leave

33.2.4(a) Payment to an employee in respect of long service leave shall be made in one of the following ways:

33.2.4(a)(i) In full in advance when the employee commences their leave; or

33.2.4(a)(ii) At the same time as payment would have been made if the employee had remained on duty; in which case payment shall, if the employee in writing so requires, be made by cheque posted to a specified address; or

33.2.4(a)(iii) In any other way agreed between the employer and the employee.

33.2.4(b) Where the employment of an employee is for any reason terminated before the employee takes any long service leave to which they are entitled or where any long service leave accrues to an employee pursuant to 33.2.1(c)(ii) the employee shall subject to the provisions of 33.2.4(c) be entitled to pay in respect of such leave as at the date of termination of employment.

33.2.4(c) Where any long service leave accrues to an employee pursuant to 33.2.1(c)(iii) the employee shall be entitled to pay in respect of such leave as at the date of termination of employment.

33.2.4(d) Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

33.2.5 Taking of leave

33.2.5(a) When an employee becomes entitled to long service leave such leave shall be granted by the employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such a date as is mutually agreed, provided that such leave is not to commence before the expiry of six months from the date of such determination.

33.2.5(b) Any long service leave shall be:

Inclusive of any public holiday or accrued day off occurring during the period when leave is taken.

33.2.5(c) If the employer and an employee so agree:

33.2.5(c)(i) the first six months long service leave to which an employee becomes entitled under this Agreement may be taken in two or three separate periods; and

33.2.5(c)(ii) any subsequent period of long service leave to which the employee becomes entitled may be taken in two separate periods: but save as aforesaid long service leave shall be taken in one period.

33.2.5(d) An employer may by agreement with an employee grant long service leave to the employee before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten years' service.

33.2.5(e) Where the employment of an employee who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the employer may, from whatever remuneration is payable to the worker upon termination, deduct and withhold an amount equivalent to the amount paid to the employee in respect of the leave in advance.

33.2.6 Definitions

For the purposes of this clause the following definitions apply:

33.2.6(a) **Pay** means remuneration for an employee's normal weekly hours of work calculated at the employee's ordinary time rate of pay provided in clause 6 hereof at the time the leave is taken or (if the employee dies before the completion of leave so taken) as at the time of their death; and shall include the amount of any increase to the employee's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates provided that where accommodation is made available to an employee during their period of leave and where a deduction is made for the rental, such amount shall be deducted from the pay for the period of leave.

33.2.6(b) **Month** shall mean a calendar month.

33.2.6(c) **Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding interpretation.

34. PUBLIC HOLIDAYS

34.1 Health and allied services employees

34.1.1 An employee shall be entitled to holidays on the following days:

34.1.1(a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

34.1.1(b) the following days as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and

34.1.1(c) Melbourne Cup Day or in lieu of Melbourne Cup Day, some other day as determined in a particular locality.

34.1.2 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

34.1.2(a) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

34.1.2(b) When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

34.1.3 Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 34.1.1 or 34.1.2, those days shall constitute additional holidays for the purpose of this award.

34.1.4 An employer, with the agreement of the majority of employees, may substitute another day for any prescribed in this clause.

34.1.4(a) An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

34.1.4(b) An agreement pursuant to 34.1.4(a) shall be recorded in writing and be available to every affected employee.

34.1.4(c) The Union which is party to this Award shall be consulted about an agreement pursuant to 34.3.4. Any disputes arising shall be dealt with by reference to the Commission.

34.1.5 If an employee works on a public holiday they shall be paid double time and a half for the time worked. If a public holiday occurs on their rostered day off they shall be entitled to one and a half times the payment for their ordinary day; or where there is mutual consent within four weeks following the date on which such holiday occurred an employee may take a day and a half off in lieu or have one and a half days added to their annual leave.

- 34.1.6** Notwithstanding the provisions of 34.1.2 in respect of Easter Saturday, an employee who ordinarily works Monday to Friday only and who does not work on Easter Saturday, shall be entitled to one day's pay in respect of Easter Saturday or, where there is mutual consent, within four weeks following the date on which such holiday occurred the employee may take one day off in lieu or have one day added to their annual leave.
- 34.1.7** A part-time employee who is ordinarily not required to work on the day of the week on which a particular holiday is observed shall not be entitled to any benefit for any such public holiday unless they are required to work on the public holiday.
- 34.1.8** Where an employee's accrued day off falls on a public holiday prescribed by this award another day shall be determined by the employer to be taken in lieu thereof, such day to be within the same four week work cycle where practical.

34.2 Medical laboratory technicians

- 34.2.1** An employee shall be entitled to holidays on the following days:
- 34.2.1(a)** New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
 - 34.2.1(b)** the following days as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and
 - 34.2.1(c)** Melbourne Cup Day or in lieu of Melbourne Cup Day, some other day as determined in a particular locality.
- 34.2.2** When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.
- 34.2.3** When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- 34.2.4** When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- 34.2.5** Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 34.2.1 or 34.2.2, those days shall constitute additional holidays for the purpose of this award.
- 34.2.6** An employer, with the agreement of the majority of employees, may substitute another day for any prescribed in this clause.
- 34.2.6(a)** An employer and his or her employees may agree to substitute another day for and prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.
 - 34.2.6(b)** An agreement pursuant to 34.2.6 shall be recorded in writing and be available to every affected employee.

- 34.2.6(c)** The Union which is party to this Award shall be consulted about an agreement pursuant to 34.2.6(a) Any disputes arising shall be dealt with by reference to the Commission.
- 34.2.7** If an employee works on a public holiday or such holiday occurs on their rostered day off they shall be paid at the ordinary time rate of pay for the time worked, in addition to which they shall be entitled to receive:
- 34.2.7(a)** within four weeks following the date on which the holiday occurred:
- 34.2.7(a)(i)** one and a half extra day's pay; or
- 34.2.7(a)(ii)** one and a half days off in lieu of the extra pay of which at least seven days notice shall be given; or
- 34.2.7(b)** one and a half days shall be added to the employees annual leave; or
- 34.2.7(c)** in the case of an employee not qualifying for annual leave and where the provisions under 34.2.7(a)(i) and 34.2.7(a)(ii) have not been used the one and a half days pay shall be added to the payment in lieu of annual leave; and
- 34.2.7(d)** one and a half times the ordinary time rate of pay for any work done in excess of eight hours.
- 34.2.8** In respect of Easter Saturday, an employee who ordinarily works Monday to Friday and who does not work on Easter Saturday, shall be entitled to one day's pay in respect of Easter Saturday or where there is mutual consent, within four weeks following the date on which such holiday occurred the employee may take one day off in lieu or have one day added to their annual leave.
- 34.2.9** A weekend worker who works on any of the holidays in 34.2.1 shall be entitled (in lieu of any entitlement under 34.2.2) to one and a half extra days pay on the first pay day following the end of the pay period during which the holiday falls. If, at the end of the yearly period in respect of which the annual leave accrues a weekend worker does not become entitled to additional leave under clause 24 then they shall, at the option of the employer be entitled to one and a half extra days pay or one and a half extra days annual leave for each such holiday on which they were rostered off.
- 34.2.10** Where an employee's accrued day off falls on a public holiday prescribed by this award a substitute day shall be determined by the employer to be taken in lieu thereof, such day to be within the same four week work cycle where practical.
- 34.2.11** With the exception of Easter Saturday an employee who is ordinarily not required to work on a Saturday or Sunday shall not be entitled to any benefit for any public holidays which may fall on or be observed on a Saturday or a Sunday unless they are required to work on the public holiday.

34.3 Scientists

34.3.1 An employee shall be entitled to holidays on the following days:

34.3.1(a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

34.3.1(b) Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and

34.3.1(c) Melbourne Cup Day or in lieu of Melbourne Cup Day, some other day as determined in a particular locality.

34.3.2 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

34.3.2(a) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

34.3.2(b) When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

34.3.3 Where public holidays are declared or prescribed on days other than those set out in 34.3.1 or 34.3.2, those days shall constitute additional holidays for the purpose of this award.

34.3.4 An employer and his or her employees may agree to substitute another day for and prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

34.3.4(a) An agreement pursuant to 34.3.4. shall be recorded in writing and be available to every affected employee.

34.3.4(b) The union which is party to this Award shall be consulted about an agreement pursuant to 34.3.4. Any disputes arising shall be dealt with by reference to the Commission.

34.3.5 An employee who works (excepting on recall) on any day specified in 34.3.1 shall:

34.3.5(a) Be paid for the time so worked with a minimum of four hours wages at the rate of time and a half in addition to the weekly wage prescribed in 18.3 or;

34.3.5(b) be entitled to time-off amounting to one and a half times the hours worked with a minimum of six hours time-off without loss of pay; such time-off shall be taken at a time mutually convenient to the employer and the employee within one month of the day on which the employee worked, provided that where an employee is entitled to a full working day off, such time may be added to the employee's annual leave by mutual consent.

- 34.3.6** An employee who is recalled to duty and works on any day specified in 34.3.1 shall be paid from the time of receiving the recall until the time of finishing such recall duty with a minimum of two hours payment for each recall at the rate of time and a half in addition to the weekly wage prescribed in 18.3.
- 34.3.7** Where a public holiday occurs on an employees rostered day off, then the employee shall be entitled to receive one and a half days pay in addition to the weekly wage or one and a half days off at a time convenient to the employer without loss of pay.
- 34.3.8** Where an employee is rostered to work on a public holiday and fails to do so such employee shall not be entitled to holiday pay for the holiday.
- 34.3.8(a)** Where an employee who is rostered to work on a public holiday, requests and is granted the day off such employee shall not be entitled to holiday pay unless the request for time-off was made at least three clear working days prior to the date of the holiday.
- 34.3.9** In respect to Easter Saturday, an employee who ordinarily works Monday to Friday and who does not work on Easter Saturday, shall be entitled to one day's pay in respect of Easter Saturday or where there is mutual consent, within four weeks following the date on which such holiday occurred the employee may take one day off in lieu or have one day added to their annual leave.

34.4 Christmas Day, Boxing Day and New Year's Day

[34.4 inserted by [PR966113](#) ppc 07Dec05 for all employers except Melbourne Pathology; [PR967649](#) ppc 15Dec05 for Melbourne Pathology]

- 34.4.1** Where Christmas Day and/or Boxing Day and/or New Year's Day fall on a Saturday or a Sunday, an employee, other than a casual employee, who works on Christmas Day and/or Boxing Day and/or New Year's Day shall be paid at the rate of time and one half for the time worked with a minimum of four hours wages. If such an employee also works on the Holiday(s) in lieu set out elsewhere in this clause, he or she shall be paid at the normal award rate for work on this day or these days.
- 34.4.2** In addition to the benefit provided by clause 34.4.1 hereof, an employee who works on Christmas Day and/or Boxing Day and/or New Year's Day shall, for each day so worked, either be allowed a substitute holiday at a time convenient to the employer or receive an extra day's wages at ordinary rates.
- 34.4.3** This clause overrides any other provisions of the award with which it is inconsistent.

35. JURY SERVICE

This clause applies to all employees under this award.

- 35.1** A weekly employee required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wage pursuant to clause 18 - Rates of pay they would have received in respect of ordinary time they would have worked had they not been on jury service.
- 35.2** An employee shall notify their employer as soon as possible of the date upon which they are required to attend for Jury Service. Further, the employee shall give their employer proof of their attendance, the duration of such attendance and the amount received in respect of such Jury Service.

36. STUDY LEAVE

36.1 Medical laboratory technicians

- 36.1.1** Qualified employees shall be granted leave with full pay in order to attend examinations necessary to obtain higher qualifications as approved from time to time by the respective ethical bodies representing the individual employee.
- 36.1.2** The amount of leave to be granted shall be such as to allow the employee to proceed to the place of examination and in addition allow one clear working day other than a Saturday or a Sunday for pre-examination study if this is so desired.
- 36.1.3** Any leave granted under the provisions of this clause shall be exempt from and in addition to the provisions of clause 30 - Annual leave.

36.2 Scientists

- 36.2.1** An employee shall be granted leave with full pay in order to attend examinations necessary to obtain a higher qualification as defined in clause 8 - Definitions of this award and examinations necessary to obtain the degree of Bachelor of Applied Science (Medical Laboratory Science), provided that the examinations are held within Australia.
- 36.2.2** The amount of such leave shall be sufficient to allow the employee:
- 36.2.2(a)** to proceed to and from the place of examination; and
 - 36.2.2(b)** in addition, allow three clear days prior to the oral examination, and three clear days or three single days prior to the written papers with a maximum of six days pre-examination study leave in any calendar year.
 - 36.2.2(c)** any leave granted under the provision of this clause shall be taken in addition to the provisions of clause 30 - Annual leave.

PART 7 - MISCELLANEOUS

37. TRAINEE SUPERVISION

37.1 Medical laboratory technicians

Trainees, with the exception of those in their final year of training shall not be required to work at any time without supervision of a qualified person of the discipline concerned within the area of the establishment where the trainee is working.

37.2 Scientists

No trainee (as defined) shall be required or permitted to work in any laboratory at any time without the supervision of a qualified employee.

38. LEAVE RESERVED

38.1 Leave to undertake training to assist in dispute settling procedures.

38.2 Establishment of training committees.

39. SAVINGS CLAUSE

Nothing in this award shall in itself operate to reduce the conditions of employment of an employee which were in existence immediately prior to or at the commencement of this award in respect of allowable matters.

SCHEDULE A - SCHEDULE OF RESPONDENTS

CDS Pathology 602 Glenhuntly Rd Elsternwick VIC 3185
Centaur International Pty Ltd, Level 9, 406 Collins Street, Melbourne, Victoria 3000 [C10830/95]
Central Veterinary Diagnostic Laboratory, Unit 24/45 Gilby Road, Mount Waverley, Victoria 3149 [C10830/95]
Clinical Diagnostic Pathology 391 St Georges Rd Fitzroy VIC 3065
Cytopath 714 High Street East Kew VIC 3102
Douglass Hanly Moir Pathology Pty Limited, 95 Epping Road, North Ryde NSW 2113 trading in Victoria as Drs Barratt and Smith Pathologists, C/- Mildura Base Hospital, Thirteenth Street, Mildura VIC 3500. [C33278/94]
Mayne Health Dorevitch Pathology Pty Ltd, 18 Banksia St., Heidelberg 3084
Gallaway Pathology, 192 Barnard Street, Bendigo Vic 3550 [C33278/94]
Geelong Pathology, 68 Myers Street, Geelong Vic 3220 [C33278/94]
Gippsland Pathology Services, 7-9 Seymour Street, Traralgon Vic 3844 [C33278/94]
Gribbles Pathology Vic Pty Ltd 14 Yarra Street South Yarra VIC 3141
Hitech Pathology, 60 Hanover Street, Fitzroy Vic 3065 [C33278/94]
Melbourne Pathology 32 Smith Street Collingwood VIC 3066
North Eastern Pathology, 52 Samaria Road, Benalla Vic 3672 [C33278/94]
Pathcare, 68 Myers St Geelong
Peninsula Pathology 7 Foot Street Frankston VIC 3199
Prophase Pathology 376 Albert Street East Melbourne VIC 3002
Quantech Pathology 2 Asquith Road Reservoir VIC 3073
Simons Genotype Diagnostics 60 Hanover Street Fitzroy VIC 3065
Trezise Neil Pathology 92 Main Street Greensborough VIC 3088
Unipath Laboratories 840 Dandenong Road Caulfield East VIC 3145
Victorian Pathology Service 1 Cottage Street Blackburn VIC 3030
Wangaratta & District Pathology Service, 11-15 Rowan Street, Wangaratta Vic 3677 [C33278/94]
Wimmera Pathology Pty Ltd, C/- Olsen & Carter, Wilson Street, Horsham, Victoria 3400 [C10830/95]

DECLARATION - VICTORIA

[Common rule declared by [PR953232](#) from 01Jan05]

Further to the Decision issued by the Commission on 18 November 2004 [[PR953309](#)] and pursuant to ss.141 and 493A of the *Workplace Relations Act 1996* (the Act), the Commission makes the following declaration for a common rule award:

1. In this Declaration:
 - 1.1 **the award** means the Health Services Union of Australia (Private Pathology – Victoria) Award 2003, as varied from time to time;
 - 1.2 **employees** means employees in the industry who perform work of a kind that is covered by the award;
 - 1.3 **employers** means employers who employ employees;
 - 1.4 **the industry** means the performance of work;
 - 1.4.1 in or in connection with the industries and/or industrial pursuits of pathology, and
 - 1.4.2 in the private pathology industry in Victoria.
2. That save for and subject to the matters referred to in clauses 4 to 7 below, the whole of the terms of the award, as varied from time to time, except those specified in clause 3 below, shall be:
 - 2.1 a common rule for the industry in Victoria and known as the Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005;
 - 2.2 binding on all employers in respect of the employment by them of employees;
 - 2.3 binding on all employees; and
 - 2.4 binding on the Health Services Union of Australia and the registered organisations respondent to the award.
3. The following clauses of the award are not included in the Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005;
 - 3.1 Clause 4 – Industry and scope of award;
 - 3.2 Clause 5 – Parties bound in so far as it refers to employers in Schedule A - Schedule of respondents; and
 - 3.3 Clause 6 – Operative date.
4. Subject to 4.1 to 4.5 below, all provisions in the Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005 are to operate from 1 January 2005.

- 4.1 With respect to annual leave, only periods of annual leave commencing on or after 31 January 2005 attract leave loading.
- 4.2 With respect to redundancy payments for employees of employers who have less than 15 employees, only service on or after 1 January 2005 is to be taken into account for the purpose of calculating **service**.
- 4.3 With respect to redundancy payment for employees of employers who have 15 employees or more, only service on or after 1 January 2004 is to be taken into account for the purpose of calculating **service**. [Note: the agreement in respect of this issue is without prejudice to the position a party may put in roping-in proceedings]
- 4.4 Any accident make-up pay clause is to apply in relation to any injury on or after 3 August 2004.
- 4.5 The wages clauses (including all allowances and penalty payments) are to commence operation from the first pay period on or after Monday, 3 January 2005, provided that in all cases the wages clauses commence operation no later than 5 January 2005.
5. The Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005 shall not apply to employers respondent by any means to any other award of the Commission in respect of the employment by them of employees covered by that award.
6. Disability Support Pension and who is employed by a supported employment service that receives funding under the *Disability Services Act 1986* (Cth) to provide support for that person. [See Note 1 below.]
7. An employer who is making superannuation contributions into a complying superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth), on behalf of an employee covered by this declaration, prior to the date of effect of this declaration is exempt from any provision in the award which specifies the fund or funds into which superannuation contributions are to be paid. [See Note 2 below.]
8. In the event of a dispute about the entitlement of an employer to set-off entitlements and benefits provided under a contract of employment made prior to the date of this declaration against entitlements and benefits required to be provided under the Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005, the matter may be referred to a Board of Reference consisting of a Member of the Commission which shall determine whether or not such a set-off should be permitted having regard to what is fair and equitable in all the circumstances of the case, without regard to technicalities and legal forms.

- 8.1 An appeal lies from a decision of a Board of Reference to a Full Bench of the Commission.
- 8.2 This clause shall apply for a period of twelve months from the commencement date of the Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005.
- 8.3 Any registered organisation bound by the terms of Health Services Union of Australia (Private Pathology) Victorian Common Rule Declaration 2005 shall be notified of the time and date of hearing in relation to any application made pursuant to this provision.
9. Nothing in this declaration reduces or in any way detracts from any accrued rights to any forms of leave including sick leave, annual leave, long service leave or parental leave to which employees or any of them have become entitled by accrual or otherwise prior to the commencement date in clause 10 below.
10. This declaration shall be an award of the Commission, shall come into force on 1 January 2005 and shall remain in force for a period of three months and thereafter in accordance with the Act. [See Note 3 below]

Note 1

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

Note 2

1. The purpose of the exception above is to maintain the status quo in respect of employers who, as at the date of effect of the common rule declaration, are making superannuation contributions into a complying superannuation fund. These employers will not be required to change their existing arrangements. Nor will there be any requirement for the existing arrangements to be the subject of an agreement between the employer and employees. For the avoidance of doubt, the exception continues to apply to employers who are making superannuation contributions to complying superannuation funds which are successor funds (as defined in Regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth), or as amended or replaced by other legislation) into which benefits are transferred, after the date of effect of the common rule declaration, in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Regulations thereunder. Further, "existing arrangements" includes the making of contributions to such funds.

2. The exception is in respect of current and future employees of the employers who are entitled to the benefit of the exemption.
3. The exception does not apply to new businesses which are established after the date on which the award is declared to have effect as a common rule.
4. The exception only applies to employers who are required to apply the terms of the award by virtue of the Common Rule declaration. It does not apply to employers who are named respondents to the award or who are parties bound by virtue of their membership of an employer organisation.
5. The exception applies subject to any Commonwealth legislation to the contrary.

Note 3

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

** end of text **