



SOUTH  
AUSTRALIAN  
EMPLOYMENT  
TRIBUNAL

## INTELLECTUAL DISABILITY SERVICES AWARD

This is a consolidated version of an award of the **South Australian Employment Tribunal** published pursuant to the provisions of the *Fair Work Act 1994*.

### **PART 1 - APPLICATION AND OPERATION OF AWARD**

#### **CLAUSE 1.1 TITLE**

OPDATE 24:03:2006 on and from

The title of this Award is the Intellectual Disability Services Award.

#### **CLAUSE 1.2 ARRANGEMENT**

OPDATE 16:02:2018 on and from

##### **1.2.1 By clause number**

*Clause No. Title*

#### **Part 1 – Application and operation of Award**

- 1.1 Title
- 1.2 Arrangement
- 1.3 Scope and persons bound
- 1.4 Locality
- 1.5 Operation of Award

#### **Part 2 - Rates of pay and classification structure**

- 2.1 Rates of pay and classification structure

#### **Part 3 - Terms of engagement**

- 3.1 Part-time employment
- 3.2 Casual employment
- 3.3 Temporary employment
- 3.4 Contract of employment

#### **Part 4 - Hours of work**

- 4.1 Rosters
- 4.2 Penalty rates

#### **Part 5 – Leave of absence**

- 5.1 Annual leave
- 5.2 Annual leave loading
- 5.3 Personal leave – injury and sickness
- 5.4 Bereavement leave
- 5.5 Parental leave
- 5.6 Personal leave to care for a family member

*Clause No. Title*

## **Part 6 – Other conditions of employment**

- 6.1 Other Conditions of employment
- 6.2 Existing conditions
- 6.3 Introduction of change
- 6.4 Anti-discrimination
- 6.5 Passive duty
- 6.6 Continuous service
- 6.7 Paid meal breaks
- 6.8 Payment for public holidays
- 6.9 Additional Compensation for Certain Work Related Injuries or Illnesses

## **Schedules**

- Sch. 1 Rates of pay and classification structure
- Sch. 2 Work level definitions
- Sch. 3 Training wage arrangements
- Sch. 4 Additional Compensation for Certain Work Related Injuries or Illnesses

### **1.2.2 In alphabetical order**

*Clause no. Subject matter*

- Sch. 4 Additional Compensation for Certain Work Related Injuries or Illnesses (and 6.9)
- 5.1 Annual leave
- 5.2 Annual leave loading
- 6.4 Anti-discrimination
- 1.2 Arrangement
- 5.4 Bereavement leave
- 3.2 Casual employment
- 6.6 Continuous service
- 3.4 Contract of employment
- 6.2 Existing conditions
- 6.3 Introduction of change
- 1.4 Locality
- 1.5 Operation of Award
- 6.1 Other conditions of employment
- 6.7 Paid meal breaks
- 5.5 Parental leave
- 3.1 Part-time employment
- 6.5 Passive duty
- 6.8 Payment for public holidays
- 4.2 Penalty rates
- 5.3 Personal leave – injury and Sickness
- 5.6 Personal leave to care for a family member
- Sch. 1 Rates of pay and classification structure (and 2.1)
- 4.1 Rosters
- 1.3 Scope and persons bound
- 3.3 Temporary employment
- 1.1 Title
- Sch. 3 Training wage arrangements
- Sch 2 Work level definitions

### **CLAUSE 1.3 SCOPE AND PERSONS BOUND**

OPDATE 01:04:2008 1<sup>st</sup> pp on or after

1.3.1 This Award is binding upon:

1.3.1.1 The Liquor Hospitality and Miscellaneous Union;

- 1.3.1.2 The Public Service Association of South Australia Incorporated;
- 1.3.1.3 The Chief Executive, Department of the Premier and Cabinet,
- 1.3.1.4 The industry of persons employed as Disability Services Officers employed by the Department for Families and Communities (Disability SA).

#### **CLAUSE 1.4 LOCALITY**

OPDATE 24:03:2006 on and from

This Award applies throughout the State of South Australia.

#### **CLAUSE 1.5 OPERATION OF AWARD**

OPDATE 24:03:2006 on and from

The Award titled "Intellectual Disability Services (SA Health Commission) Award" first operated from 17 December 1998 and was varied in relation to a s.99 review of awards operating from 24 March 2006 and retitled "Intellectual Disability Services Award".

## **PART 2 - RATES OF PAY AND CLASSIFICATION STRUCTURE**

### **CLAUSE 2.1 RATES OF PAY AND CLASSIFICATION STRUCTURE**

OPDATE 01:04:2008 1<sup>st</sup> pp on or after

Employees must be paid the rates of pay set out in Schedule 1.

## PART 3 - TERMS OF ENGAGEMENT

### CLAUSE 3.1 PART-TIME EMPLOYMENT

OPDATE 24:03:2006 on and from

- 3.1.1 An employee may be engaged by the week to work on a part-time basis for a constant number of hours less than thirty-eight (38) per week. An employee so engaged must be paid per hour one thirty eighth (1/38) of the weekly rate prescribed by this Award for the work performed.
- 3.1.2 An employee engaged on a part-time basis is entitled to receive pro-rata entitlement to sick leave, annual leave, bereavement leave and public holidays.
- 3.1.3 **Additional hours**
- 3.1.3.1 An employee engaged and paid in accordance with this clause who has for a period of at least **12 continuous months** been regularly working additional hours at the request of the **employer**, and who has a reasonable expectation that the need to work such additional hours will be ongoing, is entitled to apply, in writing, to have the additional hours added to the employee's substantive hours. For the purposes of this clause **12 continuous months** means the 12 continuous months immediately preceding the date the written application for the additional hours is received by the **employer**.
- 3.1.3.2 The **employer** of an employee who is entitled to make the application described in clause 3.1.3.1 must notify the employee in writing of the provisions of clause 3.1.3.1 within 4 weeks of the employee completing the 12 month qualifying period.
- 3.1.3.3 Any employee who is entitled to make the application described in clause 3.1.3.1 and who does not make such application within 4 weeks of receiving the written notice in clause 3.1.3.2 will be deemed to have declined to have the additional hours added to the employee's substantive hours.
- 3.1.3.4 Upon receiving a written application from an employee pursuant to clause 3.1.3.1, the **employer** must, within 4 weeks of receiving such notice, indicate in writing whether an increase in the employee's substantive hours of work is, or is not, agreed to. Where an increase is not agreed to, the **employer** must provide written reasons for same.
- 3.1.3.5 Where an employee's application is not agreed to and the employee considers that in not agreeing the **employer** has acted unreasonably, the employee may seek to have the dispute resolved through the Grievance and Dispute Settling Procedure set out in the Department of Health Human Resources Manual.
- 3.1.3.6 Where an **employer** agrees to an employee's request to have additional hours added to the employee's substantive hours, the resulting total will form the employee's new substantive working hours. An employee may only vary these new substantive hours with the written agreement of the **employer**.
- 3.1.3.7 Where the actual amount of additional hours regularly worked by an employee during the 12 month qualifying period are fixed and constant, the additional hours to be added to the employee's substantive hours will be those fixed and constant hours, or as otherwise agreed between the **employer** and the employee.
- 3.1.3.8 Where the actual amount of additional hours regularly worked by an employee during the 12 month qualifying period are variable, the **employer** will determine the number of additional hours to be offered to the employee on a substantive basis and their configuration, taking into account:
- (a) the average of the additional hours worked during the 12 month qualifying period;

- (b) the employee's patterns of employment during the qualifying period; and
- (c) operational requirements.

Additional hours worked in respect of a special event/s or other "one-off" project/s, particularly (but not only) where the funding for such an event/s or project/s is separate and independent funding that is not controlled by the South Australian Government and is provided for the specific event/s or project/s only will not be considered additional hours for the purpose of this subclause.

- 3.1.3.9 An employee may seek to have any dispute as to the appropriate number of additional hours to be offered as substantive hours resolved through the Grievance and Dispute Settling Procedure set out in the Department of Health Human Resources Manual.
- 3.1.3.10 Where additional hours are granted to an employee, the employee's pro rata leave entitlements must be adjusted accordingly, taking into account the number of completed months at the higher number of hours in the service year within which the additional hours are formally granted by the **employer**.
- 3.1.3.11 For the purposes of this clause, **employer** means a hospital or a health centre incorporated under the *SA Health Commission Act 1976*.

### CLAUSE 3.2 CASUAL EMPLOYMENT

OPDATE 19:04:2012 on and from (cl. 3.2.2)

3.2.1 A casual employee is one engaged to work on short term and/or variable employment arrangements. Such an employee does not have continuity of employment.

3.2.2 A casual employee is paid per hour worked one thirty-eighth of the weekly rate prescribed by this Award for the work performed and a twenty (20) per cent casual loading is also applied to the actual hours worked to compensate for the lack of sick and annual leave entitlements and payment of public holidays not worked.

Pursuant to the decision of the Full Commission in the *Casual Loading Case* [[2012] SAIRComm 1], the 20% loading will be increased in accordance with the following:

22% from the first full pay period commencing on or after 1 January 2012;  
23% from the first full pay period commencing on or after 1 July 2012;  
24% from the first full pay period commencing on or after 1 July 2013; and  
25% from the first full pay period commencing on or after 1 July 2014.

3.2.3 Any casual employee engaged and paid in accordance with this clause:

- (a) who has been employed by an **employer** during a period of at least 12 months, either on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment;
- (b) whose employment is consistent with part-time employment (as defined) or full-time employment; and
- (c) who has a reasonable expectation of ongoing employment,

is eligible to elect, in writing, to convert to permanent part-time or full-time (as appropriate) employment.

3.2.4 The **employer** of an eligible employee must notify the employee in writing of the provisions of clause 3.2.3 within 4 weeks of the employee completing the 12 month qualifying period.

- 3.2.5 Any eligible employee who does not make an election as provided for in clause 3.2.3 within 4 weeks of receiving the written notice in clause 3.2.4 will be deemed to have agreed to remain a casual employee.
- 3.2.6 Any eligible employee who remains a casual employee pursuant to subclause 3.2.5, may, provided that the employee also remains an eligible casual employee pursuant to the provisions of clause 3.2.3, subsequently elect to convert to permanent employment status by giving the **employer** notice in writing of such election. In this instance, the 12 month qualifying period referred to in clause 3.2.3, will be the 12 months immediately preceding the date that written notice is given.
- 3.2.7 Upon receiving written notice from an employee pursuant to clause 3.2.3 or 3.2.6, the **employer** must, within 4 weeks of receiving such notice, indicate in writing whether the conversion to permanent employment is, or is not, agreed to. Where the conversion is not agreed to, the **employer** must provide written reasons for same.
- 3.2.8 Where an employee's election to convert to permanent employment is not agreed to and the employee considers that in not agreeing the **employer** has acted unreasonably, the employee may seek to have the dispute resolved through the Grievance and Dispute Settling Procedure set out in the Department of Health Human Resources Manual.
- 3.2.9 Where an eligible employee has transferred to permanent employment pursuant to the provisions of this clause, the employee may only revert to casual employment with the written agreement of the **employer**.
- 3.2.10 Service for the purpose of leave entitlements (other than long service leave) will be calculated from the date of commencement of permanent part-time or full-time employment.
- 3.2.11 Where an eligible employee elects to convert to permanent employment status and the **employer** agrees to such conversion:
- 3.2.11.1 The normal hours of duty that will apply under the new contract of employment will be the average of the hours the employee has worked during the preceding 12 month qualifying period specified in clause 3.2.3 or 3.2.6 (as appropriate), or as otherwise agreed between the **employer** and the employee. Where the work is subject to seasonal fluctuations, the hours of duty may be configured in a manner designed to most appropriately meet the fluctuating demand. In determining the most appropriate working arrangements including configuration of hours, the **employer** must have regard to:
- (a) operational requirements;
  - (b) the employee's patterns of employment during the 12 month qualifying period;
  - (c) the employee's personal circumstances.
- 3.2.11.2 Hours worked in respect of a special event/s or other "one-off" project/s, particularly (but not only) where the funding for such an event/s or project/s is separate and independent funding that is not controlled by the South Australian Government and is provided for the specific event/s or project/s only, will not be included in calculating the preceding 12 months average hours.
- 3.2.12 For the purposes of this clause, **employer** means a hospital or a health centre incorporated under the *SA Health Commission Act 1976*.

**CLAUSE 3.3 TEMPORARY EMPLOYMENT**

OPDATE 24:03:2006 on and from

- 3.3.1 A temporary employee is one engaged to work for a constant number of hours per week on a part time or full time basis for a fixed term of at least one month's duration.
- 3.3.2 This type of employment must be supported by a written contract of employment which clearly specifies the commencing and finishing dates of the period of employment.
- 3.3.3 A temporary fixed term contract of employment cannot be extended. Where an **employer** wishes to retain the services of an employee beyond the expiry date of a fixed term contract, the **employer** may offer the employee a new fixed term contract for the period the employee is required. Any such new contract must also specify the commencing and finishing dates of the period of employment.
- 3.3.4 Any temporary employee who has been engaged on one or more separate contracts of employment by an **employer** (which may include periods of employment on a casual basis), such that the employee has been continuously employed without a break (other than for approved paid or unpaid leave purposes) for at least 12 months, and who has a reasonable expectation of ongoing employment, is eligible to elect, in writing, to convert to permanent part-time or full-time (as appropriate) employment.
- 3.3.5 The **employer** of an eligible employee must notify the employee in writing of the provisions of clause 3.3.4 prior to the expiration of the employee's current contract.
- 3.3.6 Any eligible employee who does not make an election as provided for in clause 3.3.4 within 4 weeks of receiving the written notice in clause 3.3.5 or before the employee's current contract ceases, whichever is the earlier, will cease to be an employee at the expiration of that current contract.
- 3.3.7 Upon receiving a written notice of election from an eligible employee pursuant to clause 3.3.4, the **employer** must, within 4 weeks of receiving such notice or prior to the expiration of the employee's current contract, whichever is the earlier, indicate in writing whether the conversion to permanent employment is, or is not, agreed to. Where the conversion is not agreed to, the **employer** must provide written reasons for same.
- 3.3.8 Where an employee's election to convert to permanent employment is not agreed to and the employee considers that in not agreeing the **employer** has acted unreasonably, the employee may seek to have the dispute resolved through the Grievance and Dispute Settling Procedure set out in the Department of Health Human Resources Manual.
- 3.3.9 Where an eligible employee's election to convert to permanent employment is agreed to:
- 3.3.9.1 The hours of duty that will apply under the new, permanent contract of employment will be the average of the ordinary hours worked by the employee during the 12 month qualifying period specified in clause 3.3.4, or as otherwise agreed between the **employer** and the employee;
- 3.3.9.2 Hours worked in respect of a special event/s or other "one-off" project/s, particularly (but not only) where the funding for such an event/s or project/s is separate and independent funding that is not controlled by the South Australian Government and is provided for the specific event/s or project/s only, will not be included in calculating the preceding 12 months average hours even if such special event/s or project/s extends beyond 12 months.
- 3.3.9.3 appropriate working arrangements, including the configuration of the hours of duty, will be determined by the **employer** having regard to the employee's patterns of employment during the 12 month qualifying period and operational requirements.



3.3.10 For the purposes of this clause, **employer** means a hospital or a health centre, incorporated under the *SA Health Commission Act 1976*.

### CLAUSE 3.4 CONTRACT OF EMPLOYMENT

OPDATE 24:03:2006 on and from

#### 3.4.1 **Notice of termination by employer**

3.4.1.1 In order to terminate the employment of an employee, the employer must give the employee the following notice:

| <i>Period of continuous service</i>         | <i>Period of notice</i> |
|---|-------------------------|
| Not more than 1 year                        | at least 1 week         |
| More than 1 year but not more than 3 years  | at least 2 weeks        |
| More than 3 years but not more than 5 years | at least 3 weeks        |
| More than 5 years                           | at least 4 weeks        |

3.4.1.2 In addition to the notice in 3.4.1.1, employees over 45 years of age at the time of the giving of notice with not less than 2 years continuous service are entitled to additional notice of one week.

3.4.1.3 Payment at the ordinary rate of pay in lieu of the notice prescribed in 3.4.1.1 and/or 3.4.1.2 must be made if the appropriate notice period is not given. Employment may be terminated by part of the period of notice specified and part payment in lieu.

3.4.1.4 In calculating any payment in lieu of notice, the employer must pay the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.

3.4.1.5 The period of notice in this clause does not apply in the case of:

- (a) dismissal for conduct that at common law justifies instant dismissal;
- (b) casual employees;
- (c) employees engaged for a specific period of time; or
- (d) employees engaged for a specific task or tasks.

#### 3.4.2 **Time off during notice period**

Where an employer has given notice of termination to an employee, the employee is entitled to up to 1 day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

#### 3.4.3 **Statement of employment**

At the employee's request the employer must provide to an employee whose employment has been terminated, a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

#### 3.4.4 **Payment in lieu**

If an employer makes payment in lieu for all or any of the period of notice prescribed, the period for which such payment is made must be treated as service with the employer for the purposes of computing any service related entitlement of the employee.

### 3.4.5 **Notice of termination by employee**

In order to terminate employment an employee must give the employer the following notice:

| <i>Period of continuous service</i> | <i>Period of notice</i> |
|-------------------------------------|-------------------------|
| Not more than 1 year                | at least 1 week         |
| More than 1 year                    | at least 2 weeks        |

## PART 4 - HOURS OF WORK

### CLAUSE 4.1 ROSTERS

OPDATE 24:03:2006 on and from

- 4.1.1 Rosters must specify the commencing and finishing times of each shift and must show the times within which an employee must take a meal on day work.
- 4.1.2 The method of working shifts may in any case be varied to suit the circumstances of the work site having regard to client needs. This can be done by agreement between the employer and the employee or the employee's representative, or in the absence of agreement, by seven days' notice given by the employer to the employees.
- 4.1.3 When an employee is engaged on a regular roster of shifts, the employee's place on the roster must not be altered unless that employee is given 48 hours notice of the change. However, in the following cases, the hours of shift and hours of work for any employee may be altered without notice:
- (a) Emergency over which the employer has no control.
  - (b) Mutual change of shift by employees with the consent of the employer.
  - (c) Absence of employees.
  - (d) Mutual agreement between the employer and employee.

### CLAUSE 4.2 PENALTY RATES

OPDATE 24:03:2006 on and from

- 4.2.1 An employee working on night duty for at least 8 hours each night between the hours of 8.00 pm and 8.00 am must be paid 15 per centum more than his or her ordinary rate of pay.
- 4.2.2 An employee whose ordinary hours of duty are rostered over 6 or 7 days of the week must be paid all time on duty during ordinary rostered hours (not being overtime) between midnight on Friday and midnight on the following Sunday an additional payment calculated at the rate of 50 percent of the employee's ordinary rates as prescribed in 2.1.
- 4.2.3 The penalty rate provided in 4.2.2 is in substitution for, and not cumulative upon the night duty rate prescribed in 4.2.1.
- 4.2.4 The additional payments prescribed by this clause do not form part of the employee's ordinary pay for the purpose of this Award.

## PART 5 - LEAVE OF ABSENCE

### CLAUSE 5.1 ANNUAL LEAVE

OPDATE 24:03:2006 on and from

- 5.1.1 An employee on completion of 12 months continuous service (less the period of leave), is entitled to annual leave, exclusive of public holidays Monday to Friday occurring during the period of leave, on the basis set out hereunder.
- 5.1.1.1 If employed other than as a 7 day week worker:  
4 weeks annual leave with pay.
- 5.1.1.2 If employed as a 7 day week worker, ie. an employee who is rostered to work in ordinary hours over 7 days of the week and who is rostered to work regularly on Sundays and public holidays:  
6 weeks annual leave with pay.
- 5.1.1.3 An employee who is employed for part of a service year as a 7 day week worker will be granted annual leave pro rata on the basis of 6 weeks per annum with respect to completed months of service as a 7 day week worker.
- 5.1.1.4 Where an employee is employed for part of a service year as a 7 day week worker for more than one **period**, then all such **periods**, whether or not each such **period** constitutes a completed month of service, will be aggregated for determining completed months of service as a 7 day week worker.
- 5.1.1.5 For the purpose of 5.1.1.4. a **period** is defined as any time rostered as a 7 day week worker which includes a Sunday and/or a public holiday as part of the ordinary hours of duty.
- 5.1.1.6 The annual leave to which a 7 day week worker is entitled in respect of any one year of service is to be taken in 2 periods of 21 calendar days, together with up to 3 days in lieu of public holidays accrued at the time of taking the leave.
- 5.1.1.7 Where an employee seeks a variation to the method of taking the leave prescribed in 5.1.1.6, the method may be varied subject to the employer agreeing to such variation.
- 5.1.1.8 Part time employees are entitled to payment for annual leave on a pro rata basis according to the proportion that their ordinary hours bear to full-time ordinary hours.
- 5.1.1.9 Employees whose ordinary rostered hours are 8 per day are entitled to a maximum of 12 programmed days off per annum. In accordance with that principle, one period of annual leave must include one programmed day off and the period of annual leave is not to be extended by that one day.
- 5.1.2 For the purpose of clause 5.1.1, the following payments, where applicable, are to be included in determining the amount to be paid for annual leave:
- (a) Award rate of pay for the classification concerned.
  - (b) **Passive duty** payments to which the employee concerned would have been entitled had the employee not been on annual leave.
  - (c) Paid meal break payments to which the employee concerned would have been entitled had the employee not been on annual leave.
- 5.1.3 Payment must not be made or accepted in lieu of taking annual leave, except in the case of termination of employment.

#### 5.1.4 **Annual leave exclusive of public holidays**

The annual leave prescribed by this clause is exclusive of the public holidays named in this Award. If any such holiday falls within an employee's period of annual leave the employee will receive an additional days pay.

5.1.5 Upon termination of employment, if the period of service is not exactly divisible into complete years, a full-time employee accrues 12 2/3 hours annual leave for each completed month of service in the incomplete year. A part-time employee accrues such annual leave on a pro rata basis.

#### 5.1.6 **Time of taking annual leave**

5.1.6.1 Annual leave is to be taken at a time or times agreed between the employer and the employee. Notwithstanding the provisions of this clause and without the intention of disrupting continuous period(s) of annual leave, by agreement between the employer and employee, a full-time employee may take annual leave in single day periods not exceeding 10 days in any calendar year for the purposes of personal leave to care for a family member as set out in 5.6.

5.1.6.2 If an employer and an employee fail to agree on the time (or times) for taking annual leave, or part of it, the employer may require the employee to take annual leave by giving the employee notice of the requirement at least 2 weeks before the period of annual leave is to begin.

5.1.6.3 If an employer determines the time for taking annual leave, the leave must be granted and must begin within 12 months after the entitlement to the leave accrues.

5.1.6.4 To assist employees in balancing their work and family responsibilities, an employee 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 the entitlement.

#### 5.1.7 **Payment for annual leave**

5.1.7.1 Prior to proceeding on annual leave, an employee is entitled to be paid for the period of leave at the ordinary rate of pay applicable to the employee.

5.1.7.2 Upon termination of employment, an employee must be paid for leave accrued in accordance with 5.1.5, which has not been taken.

### **CLAUSE 5.2 ANNUAL LEAVE LOADING**

OPDATE 24:03:2006 on and from

5.2.1 In addition to the payments prescribed in 5.1.2, each worker will be paid a loading on annual leave as set out hereunder.

5.2.1.1 If employed other than as a 7 day week worker either:

- (a) a loading of 17.5 per cent calculated on the employee's award rate of pay; or
- (b) the penalties the employee would have received for the rostered active hours the employee would have worked had the employee not been on annual leave during the relevant period,

whichever is the greater.

- 5.2.1.2 If employed as a 7 day week worker either:
- (a) a loading of 20 per cent calculated on the employee's award rate of pay; or
  - (b) the penalties the employee would have received for the rostered active hours the employee would have worked had the employee not been on leave during the relevant period,
- whichever is the greater.
- 5.2.2 An employee who is employed for part of a year as a 7 day week worker will be paid a loading of 17.5 per cent plus the difference between the 17.5 per cent and 20 per cent loadings calculated on a pro rata basis taking into account the number of completed months worked as a 7 day week worker.
- 5.2.3 An employee is also entitled to payment of a loading equivalent to 17.5% of the payment provided for in 5.1.7 at the time that payment is made.
- 5.2.4 Annual leave loading payment is payable on leave accrued in accordance with 5.1.5.

### **CLAUSE 5.3 PERSONAL LEAVE – INJURY AND SICKNESS**

OPDATE 24:03:2006 on and from

#### **5.3.1 Entitlement to personal leave**

An employee (other than a casual employee) who has a personal leave credit:

- 5.3.1.1 Is entitled to take personal leave if the employee is too sick to work; or
- 5.3.1.2 Who is on annual leave, is entitled to take personal leave if the person is too sick to work for a period of at least 3 consecutive days. Personal leave so taken does not count as annual leave.

#### **5.3.2 Accrual of personal leave entitlement**

An employee's personal leave accumulates from year to year and any personal leave taken by the employee is deducted from the employee's personal leave credit.

#### **5.3.3 Conditions for payment of personal leave**

- 5.3.3.1 The employee is not entitled to payment for personal leave unless:
- 5.3.3.1(a) The employee gives the employer notice of the sickness, its nature and estimated duration before the period for which personal leave is sought begins (but if the nature or sudden onset of the sickness makes it impracticable to give the notice before the period begins, the notice is validly given if given as soon as practicable and not later than 24 hours after the period begins); and
  - 5.3.3.1(b) The employee, at the request of the employer, provides a medical certificate or other reasonable evidence of sickness.
- 5.3.4 The employee is entitled to payment at the employee's ordinary rate of pay (not including payments in the nature of penalty rates, overtime, allowances or loadings) for a period of personal leave.

## CLAUSE 5.4 BEREAVEMENT LEAVE

OPDATE 24:03:2006 on and from

5.4.1 An employee (other than a casual employee), on the death of a:

- **spouse**;
- parent or parent-in-law;
- brother;
- sister;
- child;
- step-parent;
- step-child;
- guardian;
- foster parent;
- step brother/sister;
- half-brother/sister; or
- household member,

is entitled, on reasonable notice, to leave up to and including the day of the funeral of the deceased person. This leave is without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days work. Proof of death must be furnished by the employee to the satisfaction of the employer, if requested.

5.4.2 An employee may take unpaid bereavement leave by agreement with the employer.

5.4.3 This clause has no operation where the period of entitlement to this leave coincides with any other period of leave.

5.4.4 For the purpose of this clause **spouse** includes a de facto spouse

## CLAUSE 5.5 PARENTAL LEAVE

OPDATE 24:03:2006 on and from

### 5.5.1 Definitions

In this clause, unless the contrary intention appears:

5.5.1.1 **Adoption** includes the placement of a **child** with a person in anticipation of, or for the purposes of, adoption.

5.5.1.2 **Adoption leave** means adoption leave provided under 5.5.3.4.

5.5.1.3 **Child** means a child of the employee or the employee's **spouse** under the age of one year; or

means a **child** under the age of school age who is placed with an employee for the purposes of **adoption**, other than a **child** or step-**child** of the employee, or of the **spouse** of the employee, who has previously lived with the employee for a continuous period of at least six months.

5.5.1.4 **Eligible casual employee** means a casual employee employed by an employer during a period of at least 12 months, either:

- (a) on a regular and systematic basis for several periods of employment; or
- (b) on a regular and systematic basis for an ongoing period of employment,

and who has, but for the pregnancy or the decision to **adopt**, a reasonable expectation of ongoing employment.

5.5.1.5 **Extended adoption leave** means **adoption leave** provided under 5.5.3.4(b).

- 5.5.1.6 **Extended paternity leave** means **paternity leave** provided under 5.5.3.3(b).
- 5.5.1.7 **Government authority** means a person or agency prescribed as a government authority for the purposes of this definition.
- 5.5.1.8 **Maternity leave** means maternity leave provided under 5.5.3.2.
- 5.5.1.9 **Medical certificate** means a certificate as prescribed in 5.5.5.1.
- 5.5.1.10 **Parental leave** means **adoption leave, maternity leave, paternity leave, extended adoption leave** or **extended paternity leave** as appropriate, and is unpaid leave.
- 5.5.1.11 **Paternity leave** means paternity leave provided under 5.5.3.3.
- 5.5.1.12 **Primary care-giver** means a person who assumes the principal role of providing care and attention to a **child**.
- 5.5.1.13 **Relative adoption** means the **adoption** of a **child** by a parent, a **spouse** of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- 5.5.1.14 **Short adoption leave** means **adoption leave** provided under 5.5.3.4(a).
- 5.5.1.15 **Special adoption leave** means **adoption leave** provided under 5.5.10.
- 5.5.1.16 **Special maternity leave** means **maternity leave** provided under 5.5.9.1.
- 5.5.1.17 **Spouse** includes a defacto spouse or a former spouse.

## 5.5.2 Employer's responsibility to inform

5.5.2.1 On becoming aware that:

- (a) an employee is pregnant; or
- (b) an employee's **spouse** is pregnant; or
- (c) an employee is adopting a **child**,

an employer must inform the employee of:

- (i) the employee's entitlements under this clause; and
- (ii) the employee's responsibility to provide various notices under this clause.

5.5.2.2 An employer is not entitled to rely on an employee's failure to produce a certificate or give a notice as required by clause 5.5 unless the employer establishes that this clause 5.5.2 has been complied with in relation to the employee.

## 5.5.3 Eligibility for and entitlement to parental leave

5.5.3.1 Subject to the qualifications in 5.5.4, the provisions of this clause apply to full-time, part-time and **eligible casual employees** but do not apply to other employees.

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

5.5.3.1(b) An employer must not fail to re-engage a casual employee because:

- (i) the employee or the employee's **spouse** is pregnant; or



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

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

5.5.3.2 An employee who becomes pregnant is, on production of the required **medical certificate**, entitled to up to 52 weeks of **maternity leave**.

5.5.3.3 A male employee is, on production of the required **medical certificate**, entitled to one or two periods of **paternity leave**, the total of which must not exceed 52 weeks, as follows:

5.5.3.3(a) An unbroken period of up to one week at the time of the birth of the **child**.

5.5.3.3(b) A further unbroken period of up to 51 weeks in order to be the **primary care-giver** of the **child** (to be known as **extended paternity leave**).

5.5.3.4 An employee is entitled to one or two periods of **adoption leave**, the total of which must not exceed 52 weeks, as follows:

5.5.3.4(a) An unbroken period of up to three weeks at the time of the placement of the **child** (to be known as **short adoption leave**).

5.5.3.4(b) A further unbroken period of up to 49 weeks in order to be the **primary care-giver** of the **child** (to be known as **extended adoption leave**).

5.5.3.5 Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with **parental leave**, take any annual leave or long service leave (or any part of it) to which the employee is entitled.

5.5.3.6 Paid personal leave or other paid absences (other than accrued annual leave or long service leave) are not available to an employee during absence on **parental leave**.

#### 5.5.4 Qualifications on entitlements and eligibility

5.5.4.1 An employee engaged upon casual or seasonal work is not entitled to **parental leave**.

5.5.4.2 An entitlement to **parental leave** is subject to the employee having at least 12 months of **continuous service** with the employer immediately preceding:

(a) in the case of **maternity leave**, the expected date of birth; or otherwise

(b) the date on which the leave is due to commence.

5.5.4.3 The entitlement to **parental leave** is reduced:

5.5.4.3(a) In the case of **maternity leave**, by any period of **extended paternity leave** taken by the employee's **spouse** and/or by any period of **special maternity leave** taken by the employee.

5.5.4.3(b) In the case of **extended paternity leave**, by any period of **maternity leave** taken by the employee's **spouse**.

5.5.4.3(c) In the case of **extended adoption leave**, by any period of **extended adoption leave** taken by the employee's **spouse**.

### 5.5.5 Certification required

5.5.5.1 An employee must, when applying for **maternity leave** or **paternity leave**, provide the employer with a **medical certificate** that:

- (a) names the employee or the employee's **spouse**, as appropriate;
- (b) states that the employee or the employee's **spouse** is pregnant; and
- (c) states:
  - (i) the expected date of birth;
  - (ii) the expected date of termination of pregnancy; or
  - (iii) the date on which the birth took place,whichever is appropriate.

5.5.5.2 At the request of the employer, an employee must, in respect of the conferral of **parental leave**, produce to the employer within a reasonable time a statutory declaration which states:

5.5.5.2(a) *Parental leave*

- (i) The particulars of any period of parental leave sought or taken by the employee's **spouse**, and where appropriate;
- (ii) That the employee is seeking the leave to become the **primary care-giver** of a **child**.

5.5.5.2(b) *Adoption leave*

- (i) In the case of **adoption leave**, a statement from a **Government authority** giving details of the date, or presumed date, of **adoption**; and
- (ii) That for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

### 5.5.6 Notice requirements

#### 5.5.6.1 Maternity leave

5.5.6.1(a) An employee must:

- (i) Not less than 10 weeks before the expected date of birth of the **child**, give notice in writing to her employer stating the expected date of birth; and
- (ii) Give not less than four weeks notice in writing to her employer of the date of which she proposes to commence **maternity leave** stating the period of leave to be taken; and
- (iii) Notify the employer of any change in the information provided pursuant to 5.5.5 within two weeks after the change takes place.

5.5.6.1(b) An employer may, by not less than 14 days notice in writing to the employee, require her to commence **maternity leave** at any time within six weeks immediately before the expected date of birth. Such a notice may be given only if the employee has not given her employer the required notice.

#### 5.5.6.2 Paternity leave

An employee must:

- 5.5.6.2(a) Not less than 10 weeks prior to each proposed period of **paternity leave**, give the employer notice in writing stating the dates on which he proposes to start and finish the period(s) of **paternity leave**.
- 5.5.6.2(b) Notify the employer of any change in the information provided pursuant to 5.5.5 within two weeks after the change takes place.

#### 5.5.6.3 Adoption leave

An employee must:

- 5.5.6.3(a) On receiving notice of approval for **adoption** purposes, notify the employer of the approval and, within two months of the approval, further notify the employer of the period(s) of **adoption leave** the employee proposes to take.
- 5.5.6.3(b) In the case of a **relative adoption**, so notify the employer on deciding to take a **child** into custody pending an application for **adoption**.
- 5.5.6.3(c) As soon as the employee is aware of the expected date of placement of a **child** for **adoption** purposes, but not later than 14 days before the expected date of placement, give notice in writing to the employer of that date, and of the date of commencement of any period of **short adoption leave** to be taken.
- 5.5.6.3(d) At least 10 weeks before the proposed date of commencing any **extended adoption leave**, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

#### 5.5.6.4 Unforeseen circumstances

An employee is not in breach of any of these notice requirements if the employee's failure to comply is caused by unforeseen or other compelling circumstances, including:

- (a) the birth occurring earlier than the expected date; or
- (b) the death of the mother of the **child**; or
- (c) the death of the employee's **spouse**, or
- (d) the requirement that the employee accept earlier or later placement of the **child**,

so long as, where a living **child** is born, the notice is given not later than two weeks after the birth.

#### 5.5.7 **Taking of parental leave**

- 5.5.7.1 No employee may take **parental leave** concurrently with such leave taken by the employee's **spouse**, apart from **paternity leave** of up to one week at the time of the birth of the **child** or **adoption leave** of up to 3 weeks at the time of the placement of the **child**.
- 5.5.7.2 Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with **parental leave**, take any annual leave or long service leave to which the employee is entitled.

- 5.5.7.3 Paid personal leave or other paid absences are not available to an employee during the employee's absence on **parental leave**.
- 5.5.7.4 A period of **maternity leave** must be taken as one continuous period and must include, immediately following the birth of the **child**, a period of 6 weeks of compulsory leave.
- 5.5.7.5 Subject to 5.5.4 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.
- 5.5.7.6 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.
- 5.5.7.7 Where leave is granted under 5.5.7.5, 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.
- 5.5.7.8 **Maternity leave** and **paternity leave** cannot extend beyond the **child's** first birthday.
- 5.5.7.9 **Adoption leave** cannot extend beyond the **child's** fifth birthday.
- 5.5.7.10 **Extended adoption leave** cannot extend beyond the first anniversary of the initial placement of the **child**.
- 5.5.7.11 Notwithstanding the provisions of this clause, employees eligible for **parental leave** have the right to request **parental leave** as consistent with 5.5.15.
- 5.5.8 **Variation and cancellation of parental leave**
- 5.5.8.1 Without extending an entitlement beyond the limit set by 5.5.3, **parental leave** may be varied as follows:
- (a) The leave may be lengthened once by the employee giving the employer at least 14 days notice in writing stating the period by which the employee requires the leave to be lengthened.
  - (b) The leave may be lengthened or shortened by agreement between the employer and the employee.
- 5.5.8.2 **Parental leave**, if applied for but not commenced, is cancelled:
- (a) should the pregnancy terminate other than by the birth of a living **child**; or
  - (b) should the placement of a **child** proposed for **adoption** not proceed.
- 5.5.8.3 If, after the commencement of any **parental leave**:
- (a) the pregnancy is terminated other than by the birth of a living **child** or, in the case of **adoption leave**, the placement of the **child** ceases; and
  - (b) the employee gives the employer notice in writing stating that the employee desires to resume work,

the employer must allow the employee to resume work within four weeks of receipt of the notice.

5.5.8.4 **Parental leave** may be cancelled by agreement between the employer and the employee.

#### 5.5.9 **Special maternity leave and personal leave**

5.5.9.1 If:

- (a) an employee not then on **maternity leave** suffers illness related to her pregnancy she is entitled to take leave under 5.3; or
- (b) the pregnancy of an employee not then on **maternity leave** terminates after 28 weeks otherwise than by the birth of a living **child**,

she may take such paid personal leave as she is then entitled to and such further unpaid leave (to be known as **special maternity leave**) as a legally qualified medical practitioner certifies to be necessary before her return to work. Provided that the aggregate of paid personal leave, **special maternity leave** and **maternity leave** must not exceed the period to which the employee is entitled under 5.5.3.2 and she is entitled to take unpaid **special maternity leave** for such periods as a registered medical practitioner certifies as necessary.

5.5.9.2 Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, **special maternity leave**.

5.5.9.3 An employee who returns to work after the completion of a period of such leave is entitled to the position which she held immediately before commencing such leave, or in the case of an employee who was transferred to a safe job, to the position she held immediately before such transfer.

5.5.9.4 If that position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position, as nearly as possible, comparable in status and pay as that of her former position.

#### 5.5.10 **Special adoption leave**

5.5.10.1 An employee who has received approval to **adopt** a **child** who is overseas is entitled to such unpaid leave as is reasonably required by the employee to obtain custody of the **child**.

5.5.10.2 An employee who is seeking to **adopt** a **child** is entitled to such unpaid leave not exceeding five days as is required by the employee to attend such interviews, workshops, court attendances or examinations as are necessary as part of the **adoption** procedure.

5.5.10.3 The leave under this clause 5.5.10 is to be known as **special adoption leave** and does not affect any entitlement under 5.5.3.

5.5.10.4 **Special adoption leave** may be taken concurrently by an employee and the employee's **spouse**.

5.5.10.5 Where paid leave is available to the employee, the employer may require the employee to take such leave instead of **special adoption leave**.

#### 5.5.11 **Transfer to a safe job - maternity leave**

5.5.11.1 If, in the opinion of a legally qualified medical practitioner:

- (a) illness or risks arising out of the pregnancy; or
- (b) hazards connected with the work assigned to the employee,

make it inadvisable for the employee to continue her present work, the employee must, if the employer considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of **maternity leave**.

5.5.11.2 If the transfer to a safe job is not considered practicable, the employee is entitled, or the employer may require the employee, to take leave for such period as is certified necessary by a legally qualified medical practitioner.

5.5.11.3 Leave under this clause 5.5.11 will be treated as **maternity leave**.

#### 5.5.12 **Part-time work**

An employee who is pregnant or is entitled to **parental leave** may, by agreement with the employer, reduce the employee's hours of employment to an agreed extent subject to the following conditions:

5.5.12.1 Where the employee is pregnant, and to do so is necessary or desirable because of the pregnancy; or

5.5.12.2 Where the employee is entitled to **parental leave**, by reducing the employee's entitlement to **parental leave** for the period of such agreement.

5.5.12.3 An employee may work part-time under this clause despite any other provision of this Award or a contract which limits or restricts the circumstances in which part-time work may be worked, including provisions:

- (a) limiting the number of employees who may work part-time; or
- (b) establishing quotas as to the ratio of part-time to full-time employees; or
- (c) prescribing a minimum or maximum number of hours a part-time employee may work;

and such provisions do not apply to part-time work under this clause.

#### 5.5.13 **Communication during parental leave**

5.5.13.1 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:

- (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
- (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**.

5.5.13.2 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.

5.5.13.3 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 5.5.13.1.

#### 5.5.14 **Return to work after parental leave**

5.5.14.1 An employee must confirm the employee's intention to return to work, by notice in writing, to the employer given at least four weeks before the end of the period of **parental leave**.

- 5.5.14.2 On returning to work after **parental leave** an employee is entitled:
- (a) to the position which the employee held immediately before commencing **parental leave**; or
  - (b) in the case of an employee who was transferred to a safe job, to the position which she held immediately before the transfer.
- 5.5.14.3 If the employee's previous position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as comparable in status and pay to that of the employee's former position.
- 5.5.14.4 An **eligible casual employee** who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on **parental leave**.

Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the employer shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.

#### 5.5.15 Right to request

- 5.5.15.1 An employee entitled to **parental leave** pursuant to clause 5.5.3, may request the employer to allow the employee:
- (a) to extend the period of simultaneous unpaid leave provided for in clause 5.5.3.3(a) and 5.5.3.4(a) up to a maximum of eight weeks;
  - (b) to extend the period of unpaid **parental leave** provided for in 5.5.3.2 by a further continuous period of leave not exceeding 12 months;
  - (c) to return to work 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.
- 5.5.15.2 The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- 5.5.15.3 The employee's request and the employer's decision made under 5.5.15.1(b) and (c) must be recorded in writing.
- 5.5.15.4 Where an employee wishes to make a request under 5.5.15.1(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**.

#### 5.5.16 Termination of employment

- 5.5.16.1 An employee on **parental leave** may terminate their employment at any time during the period of leave by giving the required notice.
- 5.5.16.2 An employer must not terminate the employment of an employee on the ground of her pregnancy or an employee's absence on **parental leave**. Otherwise the rights of an employer in relation to termination of employment are not affected by this clause.

### 5.5.17 Replacement employees

- 5.5.17.1 A **replacement employee** is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on **parental leave**.
- 5.5.17.2 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.

## CLAUSE 5.6 PERSONAL LEAVE TO CARE FOR A FAMILY MEMBER

OPDATE 24:03:2006 on and from

### 5.6.1 Definitions

- 5.6.1.1 **Personal leave to care for a family member** means leave provided in accordance with this clause.
- 5.6.1.2 **Family** - the following are to be regarded as members of a person's family:
- (a) a **spouse**;
  - (b) a child or step child;
  - (c) a parent or parent in-law;
  - (d) any other member of the person's household;
  - (e) a grandparent or grandchild;
  - (f) any other person who is dependent on the person's care.
- 5.6.1.3 **Personal leave** means leave provided for in accordance with clause 5.3.

### 5.6.2 Paid personal leave to care for a family member

- 5.6.2.1 An employee (other than a casual employee) with responsibilities in relation to a member of the employee's **family** who need the employee's care and support:
- (a) due to personal injury; or
  - (b) for the purposes of caring for a family member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency,
- is entitled to up to 10 days or 76 hours in any completed year of **continuous service** (pro rata for part-time employees) to provide care and support for such persons when they are ill.
- 5.6.2.2 By agreement between the employer and an individual employee, the employee may access an additional amount of their accrued **personal leave** for the purposes set out in this clause. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.
- 5.6.2.3 The entitlement to use **personal leave to care for a family member** is subject to the employee being responsible for the care of the person concerned.
- 5.6.2.4 The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.
- 5.6.2.5 In normal circumstances an employee must not take **personal leave to care for a family member** where another person has taken leave to care for the same person.



- 5.6.2.6 The employee must, where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of the absence.
- 5.6.2.7 The amount of **personal leave to care for a family member** taken is to be deducted from the amount of the employees **personal leave** credit.
- 5.6.3 **Unpaid personal leave to care for a family member**
- 5.6.3.1 Where an employee has exhausted all paid **personal leave** entitlements, an employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a **family** member who is ill or who requires care due to an unexpected emergency.
- 5.6.3.2 The employer and the employee shall agree upon the period of unpaid **personal leave to care for a family member** which may be taken.
- 5.6.3.3 In absence of the agreement between the employer and the employee, the employee is entitled to take up to two days (of a maximum of 16 hours) of unpaid leave per occasion, provided that notice and evidentiary requirements are met.
- 5.6.4 **Single day absences**
- Single day absences may be taken for **personal leave to care for a family member** as provided for in Clause 5.1.6 Time of Taking Annual Leave.
- 5.6.5 **Casual employees caring responsibilities**
- 5.6.5.1 Casual employees are not entitled to **personal leave to care for a family member** or bereavement leave but subject to the notice and evidentiary requirements in 5.6 and 5.4, casuals are entitled to not be available to attend work, or to leave work:
- (a) to care for a member of their **family** who is sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
  - (b) upon the death of a **family** member.
- 5.6.5.2 The period for which the employee will be entitled to not be available to attend work for each occasion in clause 5.6.5.1 is:
- (a) the period agreed upon between the employer and the employee; or
  - (b) up to 48 hours (or 2 days) per occasion.
- 5.6.5.3 The casual employee is not entitled to any payment for the period of non-attendance under this clause.
- 5.6.5.4 An employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for under this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- 5.6.5.5 This clause does not intend to alter the nature of casual employment and is without prejudice to any parties' arguments about the nature of casual employment.

## PART 6 - OTHER CONDITIONS OF EMPLOYMENT

### CLAUSE 6.1 OTHER CONDITIONS OF EMPLOYMENT

OPDATE 24:03:2006 on and from

- 6.1.1 For the information of persons affected by this Award, the Commission advises that terms and conditions of employment not specifically dealt with in this Award can be found in the Department of Health Human Resources Manual, or such other arrangements as may be agreed between the parties.
- 6.1.2 The Intellectual Disability Services Council Incorporated must ensure that copies of these Manuals and Industrial Circulars are accessible to all employees covered by this Award.

### CLAUSE 6.2 EXISTING CONDITIONS

OPDATE 24:03:2006 on and from

Nothing in this Award must be considered to alter any existing conditions, privileges or customs in respect of any matter not specifically provided for in this Award.

### CLAUSE 6.3 INTRODUCTION OF CHANGE

OPDATE 24:03:2006 on and from

#### 6.3.1 Notification of intended changes

- 6.3.1.1 Where an employer has made a definite decision to implement changes in production, programme, organisation, structure or technology that are likely to have **significant effects** on employees, the employer must as soon as practicable notify the employees who may be affected by the proposed changes and their union(s).
- 6.3.1.2 **Significant effects** include:
- (a) major changes in the composition, operation or size of the employer's workforce or in the skills required;
  - (b) the elimination or diminution of job opportunities, promotion opportunities or job tenure;
  - (c) the alteration of hours of work,
  - (d) the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Where the Award makes provision for alteration of any of the other matters referred to in this Award, an alteration may be deemed not to have **significant effect**.

#### 6.3.2 Consultation with employees and their union(s)

- 6.3.2.1 The employer must discuss with the employees affected and the relevant union(s) among other things:
- (a) the introduction of the changes referred to in 6.3.1.1;
  - (b) the effects the changes are likely to have on employees;
  - (c) measures to avert or mitigate the adverse effects of such changes on employees.

The employer must give prompt consideration to matters raised by the employees and/or the relevant union(s) in relation to the changes.

- 6.3.2.2 The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in 6.3.1.1.
- 6.3.2.3 For the purposes of such discussion, the employer must provide in writing to the employees concerned and the relevant union(s):
- (a) all relevant information about the changes, including the nature of the changes proposed; and
  - (b) the expected effects of the changes on the employees and any other matters likely to affect them.

Employer(s) are not required to disclose confidential information, disclosure of which, when looked at objectively, would be against the employer's interests.

#### CLAUSE 6.4 ANTI-DISCRIMINATION

OPDATE 24:03:2006 on and from

- 6.4.1 It is the intention of the parties to this Award to achieve the principal object of section 3(m) of the *Fair Work Act 1994* 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.
- 6.4.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavour to ensure that neither the Award provision nor their operation are directly or indirectly discriminatory in their effects.
- 6.4.3 Nothing in this clause is to be taken to affect:
- 6.4.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation;
  - 6.4.3.2 Until considered and determined further by the Industrial Relations Commission of South Australia, the payment of different wages for employees who have not reached a particular age;
  - 6.4.3.3 An employee, employer or registered organisation, pursuing matters of discrimination in the State or Federal Jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.
- 6.4.4 Nothing in this clause is to be taken to prevent:
- 6.4.4.1 A matter referred to in 6.4.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.
  - 6.4.4.2 A matter referred to in 6.4.1 from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed.

#### CLAUSE 6.5 PASSIVE DUTY

OPDATE 19:04:2012 on and from (cl. 6.5.2.5)

- 6.5.1 For the purpose of this clause, *passive duty* refers to the arrangement where an employee remains at the employee's place of work during the period following the completion of an active shift on one day and the re-commencement of active duties the following day in order to be immediately available to provide active assistance to residents if and when the need arises during that period.

- 6.5.2 The following provisions apply to employees who are required to undertake **passive duty** as part of their normal working arrangements. Except in the circumstances described in 6.5.2.4, the provisions of Clause 4.2 Penalty Rates do not apply to time spent on **passive duty**.
- 6.5.2.1 Payment for time spent on **passive duty** will be at 50% of an employee's normal rate of pay.
- 6.5.2.2 **Passive duty** will be undertaken in conjunction with an active shift and, except where an employee does not complete a shift, the active component will comprise a minimum of 50% of the total (active and passive) shift duration.
- 6.5.2.3 **Passive duty** at the above rate will be included for all paid leave purposes, days in lieu of public holidays and superannuation purposes.
- 6.5.2.4 Minimum payment of 1 hour at ordinary time will apply for each callout except where a second or subsequent call is received during the period of the previous callout. Time spent on active duty as a result of a callout will attract the appropriate shift penalty rate prescribed in clause 4.2.
- 6.5.2.5 Casual employees will receive a 20% loading on **passive duty** hours. Pursuant to the decision of the Full Commission in the *Casual Loading Case* [[2012] SAIRComm 1], the 20% loading will be increased in accordance with the following:
- 22% from the first full pay period commencing on or after 1 January 2012;
  - 23% from the first full pay period commencing on or after 1 July 2012;
  - 24% from the first full pay period commencing on or after 1 July 2013; and
  - 25% from the first full pay period commencing on or after 1 July 2014.
- 6.5.2.6 Overtime will be paid at normal overtime rates (or time off in lieu where requested by the employee and approved by the employer) for time worked outside of the normal rostered active/passive/active shift.
- 6.5.2.7 Accommodation will be provided to employees at no cost to the employees.
- 6.5.2.8 Where the **passive duty** is undertaken in community accommodation, facilities will include:
- (a) provision of a separate room with secured door and smoke alarm;
  - (b) access to a secure space for personal effects;
  - (c) provision of a bed, pillow, bed linen, blankets, etc;
  - (d) provision of reasonable furniture;
  - (e) provision of, or access to, toilet and bathroom;
  - (f) provision for storage of light foodstuffs and beverages;
  - (g) provision of heating/cooling.
- 6.5.2.9 Where the **passive duty** is undertaken in community accommodation and that accommodation has more than one toilet, one toilet will be identified as predominantly for use of employees but no client will be denied reasonable access to such toilet.
- 6.5.2.10 The employer will make every effort to consider the standard of facilities available to meet the needs of both employees and clients when upgrading existing properties or acquiring new ones.
- 6.5.2.11 **Passive duty** will not be introduced into the Strathmont Centre, the Aged Care facility or Trinity Court.

- 6.5.2.12 The employer will consult with employees and their representatives before **passive duty** is introduced into any work area. The consultation process will include a full explanation of the requirement for the introduction of **passive duty** arrangements and must allow the employees affected and/or their representatives a minimum of 14 days to consider the proposal and provide comments on same.

### CLAUSE 6.6 CONTINUOUS SERVICE

OPDATE 24:03:2006 on and from

#### 6.6.1 Maintenance of continuous service

Except as otherwise indicated, service is deemed to be continuous despite:

- (a) Absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.
- (b) Absence of the employee from work for any cause by leave of the employer.
- (c) Absence from work on account of illness, disease or injury.
- (d) Absence with reasonable cause. Proof of such reasonable cause lies with the employee.
- (e) Interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Award or the *Fair Work Act 1994*.
- (f) Interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute.
- (g) Transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transmittee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer.
- (h) Interruption or termination of the employee's service by the employer for any reason other than those referred to in this clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated.
- (i) Any other absence from work for any reason other than those referred to in this clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than 14 days after the end of the period of absence.

#### 6.6.2 Calculation of continuous service

Where an employee's service is deemed to be continuous under this clause, the period of absence from work is not to be taken into account in calculating the employee's period of time served with the employer except:

- (a) To the extent that the employee receives or is entitled to receive pay for the period; or
- (b) Where the absence results from a decision of the employer to stand the employee off without pay.

**CLAUSE 6.7 PAID MEAL BREAKS**

OPDATE 24:03:2006 on and from

6.7.1 Disability Services Officers will be paid at ordinary time rates for meal breaks in the following circumstances:

When:

- (a) their duties are performed in the Community accommodation settings and
- (b) It is not possible for the employee to be free from all duty for the duration of the break.

6.7.2 The time spent on paid meal breaks will be counted as ordinary time for accruals toward all paid leave entitlements, including TOIL, public holidays payments and superannuation.

6.7.3 The periods of paid meal breaks do not form part of an employee's ordinary hours and as such are not taken into account for overtime purposes.

6.7.4 The appropriate shift penalty payment for the shift will apply to paid meal breaks.

**CLAUSE 6.8 PAYMENT FOR PUBLIC HOLIDAYS**

OPDATE 24:03:2006 on and from

6.8.1 **Employees rostered for duty over seven days per week**

6.8.1.1 An employee rostered off duty is to be paid an additional day's pay for each of the following public holidays: **New Years Day**, Good Friday, Queen's Birthday, Labour Day, Christmas Day.

6.8.1.2 The additional days pay is not applicable where;

- (a) the normal roster is altered on one of the above public holidays, so that an employee who would usually work on such day is not required for duty on that day; and
- (b) an employee is absent from duty on any part of the day before and any part of the day after one of the above named public holidays without reasonable cause or the prior consent of management.

6.8.1.3 An employee who works on any of the normal public holidays above is to be paid at the rate of double time and a half.

6.8.1.4 Where an employee works within his/her usual working hours on a public holiday other than those named above (ie: Adelaide Cup Day, Australia Day, Proclamation Day, Easter Saturday, Easter Monday, and ANZAC Day) no additional payment will be made for the day but a day in lieu will be granted to be taken in conjunction with annual leave. Such day is to be taken on a day that the employee would otherwise be rostered for duty.

6.8.1.5 Where an employee is rostered off duty on the following public holidays: Adelaide Cup Day, Australia Day, Proclamation Day, Easter Saturday, Easter Monday, ANZAC Day (where ANZAC Day falls on Monday to Friday inclusive), a day in lieu will be granted to be taken in conjunction with annual leave. Such day in lieu is to be taken on a day that the employee would otherwise be rostered for duty.

6.8.1.6 Where an employee works on a public holiday for more than or outside his/her usual daily working hours he/she is to be paid at the rate of double time and a half for all time worked in excess of his/her usual daily working hours.

**6.8.2 Employees who are not rostered over seven days per week**

- 6.8.2.1 A full time employee who is rostered over five days and does not work on a public holiday that falls between Monday to Friday will continue to receive their usual earnings, that is they shall be paid for the public holiday. A part time employee who is rostered over five days who would normally work on the day of the week and does not work on a public holiday that falls Monday to Friday will continue to receive their usual earnings, that is they shall be paid for the public holiday.
- 6.8.2.2 With regard to the payment for public holidays, it is the intention that an employee should neither gain nor lose in salary or wages for the week in which a public holiday occurs.
- 6.8.2.3 An employee who has qualified for payment for a public holiday and does not work on such day is to be paid for the time that they would have usually worked on that day of the week on which the public holiday falls.
- 6.8.2.4 Where an employee is absent from employment on the day before or the day after the public holiday without reasonable cause or prior approval, the employee shall not be entitled to payment for the public holiday.

**CLAUSE 6.9 ADDITIONAL COMPENSATION FOR CERTAIN WORK RELATED INJURIES  
OR ILLNESSES**

OPDATE 30:09:1987 on and from

The employer must pay and/or provide benefits pursuant to Schedule 4 of this Award.

**SCHEDULE 1 - RATES OF PAY**OPDATE 01:07:2019 1<sup>st</sup> pp on or after

S1.1 The rates of pay in this Schedule operated from the beginning of the first pay period to commence on or after 1 July 2019.

| <i>Classification</i>                 | <i>per annum</i><br>\$ |
|---------------------------------------|------------------------|
| Disability Services Officer Level 1   | 44,202                 |
|                                       | 44,814                 |
|                                       | 45,930                 |
| Disability Services Officer Level 2*  | 47,247                 |
|                                       | 47,810                 |
| Disability Services Officer Level 3** | 50,545                 |
|                                       | 52,120                 |
|                                       | 53,697                 |
| Disability Services Officer Level 4   | 56,216                 |
|                                       | 57,390                 |
|                                       | 58,567                 |
| Disability Services Officer Level 5   | 60,777                 |
|                                       | 61,949                 |
|                                       | 62,907                 |
|                                       | 64,081                 |

\* appointment on the basis of qualification (Certificate III – Community Services, Disability)

\*\* appointment by merit – Supervisory level

**S1.2 Safety net adjustments**

The rates of pay in this Award include the safety net adjustment payable under the *2019 State Wage Case and Minimum Standard for Remuneration*. This 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 enterprise agreements, currently operating enterprise flexibility agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under the existing or previous State Wage Case principles, previous General Reviews of Award Wages and the *2019 State Wage Case and Minimum Standard for Remuneration* excepting those resulting from enterprise agreements or Award variations to give effect to enterprise agreements, are not to be used to offset safety net adjustments.



### S1.3 Economic incapacity applications

Any employer or group of employers bound by an Award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs flowing from the *2019 State Wage Case and Minimum Standard for Remuneration* on the grounds of serious economic adversity. The merit of such application will be determined in light of the particular circumstances of each case and the impact on employment at the enterprise level. The increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party may make such an application under s 31A of the *South Australian Employment Tribunal Act 2014* (the SAET Act) in the form approved under rule 34 of the *South Australian Employment Tribunal Rules 2017*. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench of SAET.

Any decision to temporarily postpone or reduce an increase will be subject to a further review, the date of which will be determined by SAET at the time it decides any application under this provision.

An individual employer making an application pursuant to this provision may make a request under s 55(2) of the SAET Act that the hearing of the matter be conducted in private and/or that some or all of the evidentiary material produced in the case not be available for inspection. Any such request will be determined by SAET in the circumstances of each case.

## SCHEDULE 2 – WORK LEVEL DEFINITIONS

OPDATE 01:04:2008 1<sup>st</sup> pp on or after

|                  |  |
|------------------|--|
| <b>STANDARDS</b> | <p><b><u>Group Standard</u></b></p> <p>The objective of the classification structure for the Disability Services Officer group is to develop and maintain a competent and trained workforce that delivers appropriate standards of care to clients and undertakes tasks and participates in activities that enhance client lives and encourage and enable their participation and contribution within the South Australian community.</p> <p>The Disability Services Officer provides the full range of <b>home care</b> and <b>personal care</b> activities for clients to the extent of the level of client independence.</p> <p>The Disability Services Officer contributes to the development, implementation, evaluation and modification of individual health and lifestyle planning for clients through documenting observations and making recommendations where appropriate.</p> <p>The Disability Services Officer may be geographically separate from the Supervisor and expected to both make decisions and deal with the consequences of those decisions in accordance with established routines and/or operational judgement in the best interests of the client, the facility, personal safety, and other clients.</p> <p>Employees will have a level of mobility and while they may be assigned to a single location, they may also be located in any support facility to administer support and assistance to all levels of client disability from high dependency to low dependency according to the operational needs of the organisation. They may care for both high and low support clients in both larger congregate care settings as a team member or operating more remotely in smaller, more typically residential/community housing settings.</p> <p>The Disability Services Officer will be provided with information about all appropriate plans related to individual clients (eg healthcare plans, individual assistance plans, etc).</p> <p>At all times, the Disability Services Officer has a duty of care to follow each client's Health Plan in a timely and disciplined manner and calling for advice and support from their supervisor/manager if a query or issue arises in the first instance.</p> |
|                  | <p><b>Qualifications</b></p> <p>All personnel employed within the Disability Services Officer Group will hold a Senior First Aid Certificate prior to appointment, which must be maintained.</p> <p>At all levels apart from the Disability Services Officer 1 level (DSO1), it is essential to hold the <i>Certificate III in Community Services, Disability</i>, an equivalent or a superior level qualification in disability work.</p> <p><b>Shift Work</b></p> <p>The nature of the work is such that it will generally include rosters over 24 hours on a seven day per week basis, and active and passive duty in accordance with the relevant Award and in response to the needs of individual clients.</p>  |

|                       |   |
|-----------------------|---|
|                       | <p><b>Terms Defined</b></p> <p><b>Clients</b> – means persons who have been diagnosed with an intellectual disability, who are in formal care situations, and who require support in order to maintain a reasonable standard of life skills and to handle pressures and demands of life.</p> <p><b>Close direction</b> – means under close direction undertaking a range of operational activities which are generally routine in nature with limited discretion to enable the completion of work assignments. There is scope and generally an expectation that employees will, having regard to defined standards and instructions, utilise some initiative in the performance of activities wherever and whenever appropriate. Supervision of the employee is either direct or readily accessible.</p> <p><b>Limited direction</b> – means under limited direction conduct a range of operational activities for which there is a general statement of objectives and limited instruction. It is expected that there is a commitment to the well being of the client that will shape the individual actions and attitudes of the employee. Supervision is generally remote but accessible, and limited guidance is expected.</p> <p><b>Home care</b> – Means tasks involving the provision of domestic assistance and involving the client insofar as is practicable in all aspects. Work may comprise a range of domestic assistance and support functions including cleaning, vacuuming, dusting, washing, ironing, sweeping paths, minor maintenance jobs, preparation and cooking of meals, defrosting refrigerators, emptying and cleaning of commodes, banking and account payment, shopping, organising appointments, assistance with care of pets and care of indoor and outdoor pot plants and other tasks of a domestic nature.</p> <p><b>Personal care</b> – means tasks involving the provision of personal care and personal support activities. This may include supporting the client, or assisting the client in activities such as: showering, bathing, lifting, exercising, dressing, undressing, grooming, toileting, moving, eating, drinking, cleaning and fitting and removal of aids and appliances, preparing special diets, monitoring medications, fitting and changing external catheters, accompanying clients to appointments, assisting clients with activities, outings or shopping, assistance with communication and other personal care functions.</p> <p><b>Routine guidance</b> – involves receiving instruction regarding on job requirements, procedures and methods to be used in new or unusual tasks and situations.</p> |
| <p><b>LEVEL 1</b></p> | <p><b>Definition</b></p> <p>Operational level. Disability Services Officers will undertake <i>home care</i> and <i>personal care</i> responsibilities for the well being of clients within established routines and procedures, initially under <b>close direction</b>.</p> <p>Training on the job is a feature of the role, and following a limited amount of experience, employees will undertake activities independently although a more senior employee would usually be expected to be available to assist if required. With experience, the Disability Services Officer will be expected to operate with <b>limited direction</b>.</p>   |

At all times, the Disability Services Officer has a duty of care to follow the Health Plan for each client in a timely and disciplined manner and may be expected to call for advice and support from their supervisor/manager for any query or issue which gives the Disability Services Officer cause for concern.

### **Features**

This level is the entry level for the vast majority of people entering the personal care field where the Disability Services Officer will acquire, predominantly through on the job training, the basic skills and knowledge necessary to perform a range of activities applicable to the daily care and support of clients of Disability SA.

There is a general expectation that the Disability Services Officer at this level will undertake the Certificate III study program to enhance their understanding, appreciation and skills to be more effective in the work environment. However, irrespective of the qualification, the work undertaken is highly important and valuable within the framework of contributing to the quality of life of their clients.

Employees may be located within larger congregate care settings as a member of a team of service providers to ensure the well-being and safety of the clients and to enhance their quality of living. Alternatively, employees may provide direct support in smaller, more typical residential/community housing settings in conjunction with a small team of service providers with similar objectives.

### **Appointment**

Employees will hold a current Senior First Aid Certificate and or prior to appointment will be subject to a staff screening process comprising satisfactory police and medical checks and aptitude assessments.

Work will be within established routines, practices and procedures and under routine direction or supervision.

### **Typical Duties**

- Attend to the physical care of clients
- Undertake to the extent required the range of **home care** and **personal care** activities for clients
- Provide basic first aid when required
- Report incidents and client health issues as they arise
- Using an understanding of client needs and preferences, provide client support
- Arrange and/or assist clients with external appointments, recreational activities and accessing community resources and support their attendance
- Provide guidance to clients in every day living
- Provide clients with medication in accordance with medical instructions
- Follow individual client plans under **routine guidance** where necessary and contribute to the process of evaluation and development of the plan
- Support daily living activities and developmental programs for living skills and behaviour through skills training
- Seek ways in which close working relationships and involvements with families can be encouraged
- Provide support and guidance to clients on everyday living including client medication and human relationships

|                       |  |
|-----------------------|--|
|                       | <ul style="list-style-type: none"> <li>• Liaise with day program providers and other occupational and recreational therapy providers to ensure consistency of programs with the client's personal plan</li> <li>• Maintain communication with clients and their families and provide key social, emotional and advisory support services</li> <li>• Provide reports on client issues as required</li> <li>• Contribute to the development, implementation, evaluation and modification of individual health and lifestyle support planning for clients</li> <li>• Organise and supervise social and recreational outings</li> <li>• Provide advice and assistance to other employees and casual employees</li> <li>• Assist and/or take a lead role in the provision of therapeutic and developmental programs as part of a multi-disciplinary team according to guidelines established by senior employees</li> <li>• Undertake domestic and housekeeping duties including meal preparation and dietary supervision.</li> </ul>   |
| <p><b>LEVEL 2</b></p> | <p><b><u>Definition</u></b></p> <p>Senior operational level. Disability Services Officers will undertake <i>home care</i> and <i>personal care</i> responsibilities for the well being of clients within established routines and procedures. Employees may be expected to undertake essential activities with a high level of independence.</p> <p>The Disability Services Officer at this level will have attained the Certificate III in Community Services (Disability) or an equivalent or superior qualification.</p> <p>The Disability Services Officer Level 2 can be expected to operate with <b><i>limited direction</i></b>.</p> <p><b><u>Features</u></b></p> <p>Disability Services Officers at this level will have attained experience prior to attaining this classification, and are expected to develop through experience to become increasingly competent and skilled, particularly in handling client behavioural issues.</p> <p>Prior to appointment at this level the employee will have successfully completed the Certificate III in Community Services, an equivalent or a superior level qualification of disability work.</p> <p><b><u>Appointment</u></b></p> <p>Disability Services Officers Level 1 will be reclassified to this level following completion of the qualification requirements.</p> <p><b><u>Typical duties</u></b></p> <p>The Disability Services Officer Level 2 may undertake <u>any and all of the duties</u> specified for employees at Level 1 (DSO1), and <u>in addition</u> may also undertake additional activities including:</p> <ul style="list-style-type: none"> <li>• Contribute towards the process of evaluation and development of individual client plans</li> <li>• Encourage through personal involvement close working relationships with families</li> <li>• Provide key social, emotional and advisory support services to clients and their families</li> <li>• Provide advice and support to other Disability Services Officers and</li> </ul> |

|   |  |
|---|--|
|   | other staff.   |
| <b>Disability Services Officer Grade 2A</b> | (Level to be abolished)  |
| <b>Disability Services Officer (DSO3)</b>   | <p><b><u>Definition</u></b></p> <p>Supervisory Level. Employees at this level may undertake the full range of <b>home care</b> and <b>personal care</b> duties for the well being of clients within established routines and procedures. In addition to these responsibilities, employees will also ensure adequate care and support is being provided within each care facility and to each client. This will involve:</p> <ul style="list-style-type: none"> <li>• Monitoring the standards of care being made available,</li> <li>• Providing personal training for Disability Services Officers,</li> <li>• Ensuring appropriate staffing provision on a day to day basis, and</li> <li>• Being a principal contact in cases of emergency or other critical occurrence.</li> </ul> <p><b><u>Features</u></b></p> <p>The nature and support provision is such that a Disability Services Officer may be assigned to a significant work unit with responsibility for a number of direct care staff in a congregate care setting, or to a smaller facility, or for a number of smaller facilities, with responsibility for direct care staff located remotely in a variety of more typical residential/community housing settings. The Disability Services Officer is responsible to ensure that both the facility and the standards of care are appropriate to the needs of the client, identifying requirements for improvement.</p> <p><b><u>Appointment</u></b></p> <p>Appointment at this level will be by advertising of established vacancies and formal merit-based appointment processes.</p> <p>For appointment at the Disability Services Officer Supervisor level, the Certificate III in Community Services, Disability or an equivalent qualification in an appropriate disability related discipline is essential.</p> <p>A Certificate IV in Disability Work or Certificate IV in Front Line Management are highly desirable standards which would be expected to enhance operations at this level.</p> <p><b><u>Typical duties</u></b></p> <p>The Disability Services Officer Supervisor may undertake <u>any or all of the duties</u> specified for employees at the Disability Services Officers levels (DSO1 and DSO2), and <u>in addition</u> may also undertake additional duties including:</p> <ul style="list-style-type: none"> <li>• Oversee the implementation of individual client plans and programs</li> <li>• Monitor and maintain work performance levels of direct care staff</li> <li>• Counsel staff in performing their roles as specified</li> <li>• Inform manager of key client and staff issues</li> <li>• Ensure maintenance of all client case files and organisational records</li> <li>• Assist with planning, implementation and evaluation of the effectiveness of service goals</li> <li>• Develop and implement training strategies for staff in conjunction with external support staff</li> <li>• Ensure the standards of behaviour, dress standards and personal</li> </ul> |

|  |  |
|--|--|
|  | <p>grooming of staff</p> <ul style="list-style-type: none"><li>• Arrange for replacement staff to cover short term emergencies</li><li>• Ensure OHSW operational standards within the area of responsibility</li></ul> |
| <b>Disability Services Officer Level 4</b> | There are no positions currently or in the recent past at this level.  |
| <b>Disability Services Officer Level 5</b> | There are no positions currently or in the recent past at this level.  |

## SCHEDULE 3 – TRAINING WAGE ARRANGEMENTS

OPDATE 01:07:2019 1<sup>st</sup> pp on or after

### CLAUSE S3.1 TITLE

This Schedule shall be known as the Intellectual Disability Services Award Training Wage Arrangements Schedule.

### CLAUSE S3.2 ARRANGEMENT

| <i>Clause No.</i> | <i>Title</i>                                 |
|-------------------|--|
| S3.1              | Title  |
| S3.2              | Arrangement                                  |
| S3.3              | Application                                  |
| S3.4              | Operation                                    |
| S3.5              | Definitions                                  |
| S3.6              | Training conditions                          |
| S3.7              | Employment conditions                        |
| S3.8              | Wages  |
| S3.9              | Dispute settling procedures                  |
| S3.10             | Dispute settlement over traineeship schemes  |
| S3.11             | Part-time traineeships                       |
| Section A         | Allocation of Traineeships to Wage Levels    |
| Section B         | Traineeship Schemes excluded from this Award |

### CLAUSE S3.3 APPLICATION

S3.3.1 This Schedule shall apply to persons:

- (a) who are undertaking a **Traineeship** (as defined); and
- (b) whose employment is, or otherwise would be, covered by the Award.

S3.3.2 This Schedule does not apply to an **apprentice**.

This Schedule only applies to AQF IV **Traineeships** when the AQF III **Traineeship** in the **Training Package** is listed in Section A. Further, this Schedule also does not apply to any certificate IV training qualification that is an extension of the competencies acquired under a certificate III qualification, which is excluded from this Schedule due to the operation of this subclause.

S3.3.3 At the conclusion of the **Traineeship**, this Schedule ceases to apply to the employment of the Trainee and the Award shall apply to the former Trainee.

S3.3.4 Nothing in this Schedule shall be taken to replace the prescription of training requirements in the Award.

### CLAUSE S3.4 OPERATION

This Schedule shall operate from the first pay period commencing on or after 1 July 2019.



**CLAUSE S3.5 DEFINITIONS**

- S3.5.1 **Adult Trainee** means for the purpose of this Schedule a **Trainee** who would qualify for the highest wage rate in Wage Level A, B or C if covered by that wage level.
- S3.5.2 **Approved Training** means that training which is specified in the **Training Plan**, which is part of the **Training Agreement**, which is registered with the **T&SC**. It includes training undertaken both on and off-the-job in a **Traineeship** and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a National **Training Package** or a **Traineeship** Scheme and leads to a qualification under the Australian Qualification Framework.
- S3.5.3 **T&SC** means the Training and Skills Commission under the **Training Act**.
- S3.5.4 **Existing employee** means a person employed by the employer under the Award immediately prior to becoming an Adult Trainee.
- S3.5.5 **Award** means the Intellectual Disability Services Award.
- S3.5.6 **Commission** means the Industrial Relations Commission of South Australia.
- S3.5.7 **Trainee** is an individual who is a signatory to a **Training Agreement** registered with the **T&SC** and is involved in paid work and structured training, which may be on or off the job. **Trainee** does not include an individual who already has the competencies to which the **Traineeship** is directed.
- S3.5.8 **Traineeship** means a system of training which has been approved by the **T&SC**, which meets the requirements of a National **Training Package** developed by a National Industry Training Advisory Board and endorsed by the National Training Quality Council, which leads to an Australian Qualifications Framework qualification specified by that National **Training Package**, and includes full-time **Traineeships** and part-time **Traineeships** including school-based **Traineeships**.
- S3.5.9 **Training Act** means the *Training and Skills Development Act 2008* or any successor legislation.
- S3.5.10 **Training Agreement** means a Contract of Training for a **Traineeship** made between the employer and a **Trainee**, which is registered with the **T&SC**.
- S3.5.11 **Training Package** means the competency standards, assessment guidelines and Australian Qualifications Framework qualification endorsed for an industry or enterprise by the National Training Quality Council and placed on the National Training Information Service with the approval of Commonwealth and State Ministers responsible for vocational education and training.
- S3.5.12 **Training Plan** means a programme of training which forms part of a **Training Agreement** registered with the **T&SC**.
- S3.5.13 **Traineeship Scheme** means an approved **Traineeship** applicable to a group or class of employees or to an industry or sector of an industry or an enterprise, which has been approved by the **T&SC**.
- S3.5.14 **Year 10** - for the purposes of this Schedule, any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

**CLAUSE S3.6 TRAINING CONDITIONS**

- S3.6.1 The **Trainee** shall attend an **Approved Training** course or **Training Program** prescribed in the **Training Agreement** or as notified to the trainee by the **T&SC** in accredited and relevant Training Schemes.

- S3.6.2 Employment as a **Trainee** under this Schedule shall not commence until the relevant **Training Agreement**, made in accordance with a Training Scheme, has been signed by the employer and the Trainee and lodged for registration with the **T&SC**, provided that if the **Training Agreement** is not in a standard format, employment as a **Trainee** shall not commence until the **Training Agreement** has been registered with the **T&SC**. The employer shall ensure that the **Trainee** is permitted to attend the training course or program provided for in the **Training Agreement** and shall ensure that the **Trainee** receives the appropriate on-the-job training.
- S3.6.3 The employer shall provide a level of supervision in accordance with the **Traineeship Agreement** during the **Traineeship** period.
- S3.6.4 The provisions of the **Training Act** dealing with the monitoring by officers of the **T&SC** and the use of training records or work books as part of this monitoring process shall apply to **Traineeships** under this Schedule.

### CLAUSE S3.7 EMPLOYMENT CONDITIONS

- S3.7.1 A full-time **Trainee** shall be engaged for a maximum of one year's duration, except in respect of AQF III and AQF IV **Traineeships** which may extend up to two years full-time, provided that a **Trainee** shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. Existing employees will not be subject to a probation period. By agreement in writing, and with the consent of the **T&SC**, the Employer and the **Trainee** may vary the duration of the **Traineeship** and the extent of **Approved Training** provided that any agreement to vary is in accordance with the relevant **Traineeship Scheme**. A part-time **Trainee** shall be engaged in accordance with the provisions of Clause S3.11 Part-Time Traineeships, of this Schedule.
- S3.7.2 Where the **Trainee** completes the qualification in the Training Agreement earlier than the time specified in the **Training Agreement**, then the **Traineeship** may be concluded by mutual agreement.
- S3.7.3 Termination of employment of **Trainees** is dealt with in the **Training Agreement**, or the **Training Act**. An employer initiating such action shall give written notice to the **Trainee** at the time the action is commenced and to the **T&SC** in accordance with the **Training Act**.
- S3.7.4 The **Trainee** shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the **Approved Training**.
- S3.7.5 Where the employment of a **Trainee** by the employer is continued after the completion of the **Traineeship** period, such **Traineeship** period shall be counted as service for the purposes of the Award or any other legislative entitlements.
- S3.7.6 **Trainees working overtime**
- S3.7.6.1 Reasonable overtime may be worked by the **Trainee** provided that it does not affect the successful completion of the **Approved Training**.
- S3.7.6.2 No **Trainee** shall work overtime or shiftwork on their own unless consistent with the provisions of the Award.
- S3.7.6.3 No **Trainee** shall work shiftwork unless the shiftwork makes satisfactory provision for **Approved Training**. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork **Trainees**.

- S3.7.6.4 The **Trainee** wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Award, unless the Award makes specific provision for a **Trainee** to be paid at a higher rate, or the employer and **Trainee** agree in writing that a **Trainee** will be paid at a higher rate, in which case the higher rate shall apply.
- S3.7.7 All other terms and conditions of the Award that are applicable to the **Trainee** or would be applicable to the **Trainee** but for this Schedule shall apply unless specifically varied by this Schedule.
- S3.7.8 A **Trainee** who fails to either complete the **Traineeship**, or who cannot for any reason be placed in full-time employment with the employer on successful completion of the **Traineeship**, shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions of the Award. This clause does not apply to existing employees.

Note: It is not intended that current employees shall be displaced from employment by **Trainees**.

### CLAUSE S3.8 WAGES

- S3.8.1 The weekly wage payable to full-time **Trainees** shall be as provided in clauses S3.8.4, S3.8.5 and S3.8.6 of this Schedule and in accordance with Clause S3.7 Employment Conditions.
- S3.8.2 These wage rates will only apply to **Trainees** while they are undertaking an **Approved Traineeship**, which includes **Approved Training** as defined in this Schedule.
- S3.8.3 The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.
- S3.8.4 **Wage Level A**

Where the Accredited Training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level A.

|                                   | <i>Highest year of schooling completed</i> |                |                |
|-----------------------------------|--|----------------|----------------|
|                                   | <i>Year 10</i>                             | <i>Year 11</i> | <i>Year 12</i> |
|                                   | \$   | \$             | \$             |
| School Leaver                     | 267.00 (50%)                               | 333.00 (33%)   |                |
|                                   | 310.00 (33%)                               | 373.00 (25%)   |                |
|                                   | 340.00                                     | 373.00         | 448.00         |
| Plus 1 year <b>out of school</b>  | 373.00                                     | 448.00         | 518.00         |
| Plus 2 years <b>out of school</b> | 448.00                                     | 518.00         | 605.00         |
| Plus 3 years <b>out of school</b> | 518.00                                     | 605.00         | 692.00         |
| Plus 4 years <b>out of school</b> | 605.00                                     | 692.00         |                |
| Plus 5 or more years              | 692.00                                     |                |                |

### S3.8.5 Wage Level B

Where the Accredited Training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level B.

|  | <i>Highest year of schooling completed</i> |                |                |
|--|--|----------------|----------------|
|  | <i>Year 10</i>                             | <i>Year 11</i> | <i>Year 12</i> |
|  | \$   | \$             | \$             |
| School Leaver                            | 267.00 (50%)                               | 333.00 (33%)   |                |
|  | 310.00 (33%)                               | 373.00 (25%)   |                |
|  | 340.00                                     | 373.00         | 432.00         |
| Plus 1 year <b><i>out of school</i></b>  | 373.00                                     | 432.00         | 499.00         |
| Plus 2 years <b><i>out of school</i></b> | 432.00                                     | 499.00         | 583.00         |
| Plus 3 years <b><i>out of school</i></b> | 499.00                                     | 583.00         | 665.00         |
| Plus 4 years <b><i>out of school</i></b> | 583.00                                     | 665.00         |                |
| Plus 5 or more years                     | 665.00                                     |                |                |

### S3.8.6 Wage Level C

Where the Accredited Training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level C.

|  | <i>Highest year of schooling completed</i> |                |                |
|--|--|----------------|----------------|
|  | <i>Year 10</i>                             | <i>Year 11</i> | <i>Year 12</i> |
|  | \$   | \$             | \$             |
| School Leaver                            | 267.00 (50%)                               | 333.00 (33%)   |                |
|  | 310.00 (33%)                               | 373.00 (25%)   |                |
|  | 340.00                                     | 373.00         | 432.00         |
| Plus 1 year <b><i>out of school</i></b>  | 373.00                                     | 432.00         | 487.00         |
| Plus 2 years <b><i>out of school</i></b> | 432.00                                     | 487.00         | 545.00         |
| Plus 3 years <b><i>out of school</i></b> | 487.00                                     | 545.00         | 607.00         |
| Plus 4 years <b><i>out of school</i></b> | 545.00                                     | 607.00         |                |
| Plus 5 or more years                     | 607.00                                     |                |                |

### S3.8.7 School Based Traineeships

|   | <i>Year of Schooling</i> |                |
|---|--------------------------|----------------|
|   | <i>Year 11</i>           | <i>Year 12</i> |
|   | \$                       | \$             |
| School based <b><i>Traineeships</i></b> in Wage Levels A, B and C | 340.00                   | 373.00         |

\*Figures in brackets indicate the average proportion of time spent in ***Approved Training*** to which the associated wage rate is applicable. Where not specifically indicated, the average proportion of time spent in structured training, which has been taken into account in setting the rate, is 20 per cent.

### S3.8.8 Wage rates for Certificate IV Traineeships

S3.8.8.1 ***Trainees*** undertaking an AQF IV ***Traineeship*** shall receive the relevant weekly wage rate for AQF III ***Trainees*** at Wage Levels A, B or C as applicable with the addition of 3.8 per cent of that wage rate.

S3.8.8.2 An ***Adult Trainee*** who is undertaking a ***Traineeship*** for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

| <i>Wage Level</i> | <i>First year of<br/>Traineeship</i> | <i>Second year of<br/>Traineeship</i> |
|-------------------|--------------------------------------|---------------------------------------|
|                   | \$                                   | \$                                    |
| Wage Level A      | 719.00                               | 747.00                                |
| Wage Level B      | 691.00                               | 718.00                                |
| Wage Level C      | 630.00                               | 653.00                                |

- S3.8.9 Where a person was employed by the employer immediately prior to becoming an **Adult Trainee** with the employer, such person shall not suffer a reduction in the rate of pay by virtue of becoming a **Trainee**.
- S3.8.10 Where a **Traineeship** is converted from an AQF II to an AQF III **Traineeship**, or from an AQF III to an AQF IV **Traineeship**, the **Trainee** shall move to the next higher rate provided in this Schedule, if a higher rate is provided for that new AQF level.
- S3.8.11 Section A sets out the Wage Level of a **Traineeship**.
- S3.8.12 For the purposes of this provision, **out of school** shall refer only to periods out of school beyond **Year 10**, and shall be deemed to:
- S3.7.12.1 Include any period of schooling beyond **Year 10**, which was not part of nor contributed to a completed year of schooling;
- S3.7.12.2 Include any period during which a **Trainee** repeats in whole or part of a year of schooling beyond **Year 10**;
- S3.7.12.3 Not include any period during a calendar year in which a year of schooling is completed; and
- S3.7.12.4 Have effect on an anniversary date being January 1 in each year.
- S3.8.13 Despite any other clause in this Schedule, **Trainees** may not be employed under this Schedule under the **Traineeship Schemes** and in the areas of employment listed in Section B.

### CLAUSE S3.9 DISPUTE SETTLING PROCEDURES

For matters not dealt with in accordance with the **Training Act**, the procedures to avoid industrial disputation contained in the Award will apply to **Trainees**.

### CLAUSE S3.10 DISPUTE SETTLEMENT OVER TRAINEESHIP SCHEMES

- S3.10.1 A party may initiate this procedure when that party wishes to argue that this Schedule should not provide for employment under a particular **Traineeship Scheme** despite the allocation of the scheme to a Wage Level by Section A.
- S3.10.2 The party shall:
- S3.10.2.1 Notify the relevant parties of an intention to dispute the particular **Traineeship Scheme**, identifying the scheme.
- S3.10.2.2 Request the parties with an interest in the scheme to meet with them at a mutually agreed location.
- S3.10.2.3 If agreement cannot be reached the matter may be referred to the Commission for conciliation.
- S3.10.2.4 If agreement is not reached during conciliation then an application may be made to include the **Traineeship Scheme** in Section B.

### CLAUSE S3.11 PART-TIME TRAINEESHIPS

S3.11.1 This clause shall apply to **Trainees** who undertake a **Traineeship** on a part-time basis by working less than full-time hours and by undertaking the **Approved Training** at the same or lesser training time than a full-time **Trainee**.

S3.11.1.1 A part-time **Trainee** (other than a school-based **Trainee**) will be engaged to work for no less than an average of 22.5 hours per week, however in special circumstances, including where the employee is an existing employee who already works less than 22.5 hours per week, and with the agreement between the employer and employee, a part-time **Trainee** can be engaged to work for no less than a minimum average of 15 hours per week.

S3.11.1.2 A part-time school-based Trainee may be engaged to work less hours than the minimum hours prescribed by this Schedule and the Award provided that the Trainee remains enrolled in compulsory education.

#### S3.11.2 Wages

S3.11.2.1 The tables set out below are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in **Approved Training**. These rates are derived from a 38 hour week.

Table 1: Trainees who have left school (\$ per hour)

| Wage Level A                      | Highest year of schooling completed |         |         |
|-----------------------------------|-------------------------------------|---------|---------|
|                                   | Year 10                             | Year 11 | Year 12 |
|                                   | \$                                  | \$      | \$      |
| School Leaver                     | 11.19                               | 12.27   | 14.73   |
| Plus 1 year <b>out of school</b>  | 12.27                               | 14.73   | 17.05   |
| Plus 2 years <b>out of school</b> | 14.73                               | 17.05   | 19.88   |
| Plus 3 years <b>out of school</b> | 17.05                               | 19.88   | 22.76   |
| Plus 4 years <b>out of school</b> | 19.88                               | 22.76   |         |
| Plus 5 or more years              | 22.76                               |         |         |
| <br>Wage Level B                  |                                     |         |         |
|                                   | Year 10                             | Year 11 | Year 12 |
|                                   | \$                                  | \$      | \$      |
| School Leaver                     | 11.19                               | 12.27   | 14.20   |
| Plus 1 year <b>out of school</b>  | 12.27                               | 14.20   | 16.41   |
| Plus 2 years <b>out of school</b> | 14.20                               | 16.41   | 19.18   |
| Plus 3 years <b>out of school</b> | 16.41                               | 19.18   | 21.89   |
| Plus 4 years <b>out of school</b> | 19.18                               | 21.89   |         |
| Plus 5 or more years              | 21.89                               |         |         |
| <br>Wage Level C                  |                                     |         |         |
|                                   | Year 10                             | Year 11 | Year 12 |
|                                   | \$                                  | \$      | \$      |
| School Leaver                     | 11.19                               | 12.27   | 14.20   |
| Plus 1 year <b>out of school</b>  | 12.27                               | 14.20   | 16.03   |
| Plus 2 years <b>out of school</b> | 14.20                               | 16.03   | 17.92   |
| Plus 3 years <b>out of school</b> | 16.03                               | 17.92   | 19.96   |
| Plus 4 years <b>out of school</b> | 17.92                               | 19.96   |         |
| Plus 5 or more years              | 19.96                               |         |         |

Table 2: School based Traineeships (\$ per hour)

|                        | <i>Year of schooling</i> |                |
|------------------------|--------------------------|----------------|
|                        | <i>Year 11</i>           | <i>Year 12</i> |
|                        | \$                       | \$             |
| Wage Levels A, B and C | 11.19                    | 12.27          |
| 20% loading*           | 13.43                    | 14.72          |

\*Where agreement exists with the trainee, an additional 20% loading may be paid on all ordinary hours in lieu of annual leave, personal leave, and public holidays.

Table 3: Wage rates for part-time Certificate IV Traineeships (\$ per hour)

**Trainees** undertaking a part-time AQF IV **traineeship** shall receive the relevant hourly rate for AQF III **trainees** at Wage Levels A, B or C as applicable under Table 1 or 2 with the addition of 3.8 per cent of that wage rate.

An **adult trainee** (as defined) who is undertaking a part-time **traineeship** for an AQF IV qualification shall receive the following hourly rate as applicable based on the allocation of AQF III qualifications:

| <i>Wage Level</i> | <i>First year of traineeship</i> | <i>Second year of traineeship</i> |
|-------------------|----------------------------------|-----------------------------------|
|                   | \$                               | \$                                |
| Wage Level A      | 23.64                            | 24.53                             |
| Wage Level B      | 22.73                            | 23.59                             |
| Wage Level C      | 20.72                            | 21.52                             |

S3.11.3 The hours for which payment shall be made are determined as follows:

S3.11.3.1 Where the **Approved Training** for a **Traineeship** (including a school based **Traineeship**) is provided off-the-job by a registered training organisation, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part-time **Trainee** on-the-job.

S3.11.3.2 Where the **Approved Training** is undertaken solely on-the-job and the average proportion of time to be spent in **Approved Training** is 20 per cent (i.e. the same as for the equivalent full-time **Traineeship**), then the total hours on-the-job shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

S3.11.3.3 Where the **Approved Training** is partly on-the-job and partly off-the-job and the average proportion of time to be spent in **Approved Training** is 20 per cent (i.e. the same as for the equivalent full-time **Traineeship**), then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

**Note:** As noted in clause S3.8, 20 per cent is the average proportion of time spent in **Approved Training**, which has been taken into account in setting the wage rates for most full-time **Traineeships**.

S3.11.3.4 Where a person was employed part-time by an employer under this Award immediately prior to becoming a part-time **adult trainee** with that employer, such person shall not suffer a reduction in the hourly rate of pay by virtue of becoming a **trainee**.

S3.11.3.5 Where the normal full-time weekly hours are not 38 the appropriate hourly rate may be obtained by multiplying the rate in the table by 38 and then dividing by the normal full-time hours.

### S3.11.4 General Formula

S3.11.4.1 For **Traineeships** not covered by S3.11.2.1, the following formula for calculation of wage rates shall apply:

The wage rate shall be pro-rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the **Traineeship**, which may also be varied on the basis of the following formula:

$$\text{Full-time wage rate} \quad \times \quad \frac{\text{Trainee hours} - \text{average weekly training time}}{30.4^*}$$

**\*Note:** 30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time **Trainees** (i.e. 20%). A pro-rata adjustment will need to be made in the case where the Award specifies different ordinary full-time hours: for example where the ordinary weekly hours are 40, 30.4 will be replaced by 32.

- (a) Full-time wage rate means the appropriate rate as set out in S3.8.4, S3.8.5, S3.8.6 and S3.8.7 of this Schedule.
- (b) **Trainee** hours shall be the hours worked per week including the time spent in **Approved Training**.
- (c) Average weekly training time is based upon the length of the **Traineeship** specified in the Traineeship Agreement or **Training Agreement** as follows:

$$\frac{7.6 \times 12}{\text{Length of the } \textit{Traineeship} \text{ in months}}$$

Note 1: 7.6 in the above formula represents the average weekly training time for a full-time **Trainee** whose ordinary hours are 38 per week. A pro-rata adjustment will need to be made in the case where the Award specifies different ordinary time hours for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

Note 2: The parties note that the **Training Agreement** will require a **Trainee** to be employed for sufficient hours to complete all requirements of the **Traineeship**, including the on-the-job work experience and demonstration of competencies. The parties also note that this would result in the equivalent of a full day's on-the-job work per week.

#### S3.11.4.2 Example of the calculation for the wage rate for a part-time **Traineeship**

A school student commences a **Traineeship** in year 11. The ordinary hours of work are 38. The **Training Agreement** specifies two years (24 months) as the length of the **Traineeship**.

**Average weekly training time** is therefore  $7.6 \times \frac{12}{24} = 3.8$  hours.

**Trainee hours** totals 15 hours; these are made up of 11 hours work which is worked over two days of the week plus 1.5 hours on-the-job training plus 2.5 hours off-the-job **Approved Training** at school and at TAFE.

So the wage rate in year 11 is:

$$\$340 \times \frac{15 - 3.8}{30.4} = \$125.26 \text{ (plus any applicable penalty rates under the Award)}$$



The wage rate varies when the student completes year 11 and passes the anniversary date of 1 January the following year to begin year 12 and/or if **Trainee hours** change.

### S3.11.5 Employment conditions for all part-time trainees

- S3.11.5.1 A part-time **Trainee** shall receive, on a pro-rata basis, all employment conditions applicable to a fulltime **Trainee**. All the provisions of the Award shall apply to part-time **Trainees** except as specified in this Schedule.
- S3.11.5.2 However, a **Trainee** undertaking a school based **Traineeship** may, with the agreement of the **Trainee**, be paid an additional loading 20 per cent on all ordinary hours in lieu of annual leave, sick leave, personal leave and public holidays. Notwithstanding this, where a **Trainee** is called upon to work on a public holiday the provisions of the Award shall apply.
- S3.11.5.3 A part-time **Trainee** may, by agreement, transfer from a part-time to a full-time **Traineeship** position should one become available.
- S3.11.5.4 The minimum engagement periods specified in the Award shall also be applicable to part-time **Trainees**.

## SECTION A

### Allocation of Traineeships to Wage Levels

Wage Levels that apply to Certificates under Training Packages

#### **Wage Level A**

| <i>Training package</i>        | <i>Certificate level</i> |
|--------------------------------|--------------------------|
| Community Services, Disability | III                      |

## SECTION B

### Traineeship schemes excluded from this Award

Nil

## **SCHEDULE 4 - ADDITIONAL COMPENSATION FOR CERTAIN WORK-RELATED INJURIES OR ILLNESSES**

OPDATE 30:09:1987 on and from

### **CONTENTS**

*Clause No. Subject matter*

#### **Part 1 – Introduction**

- S4.1 Restoration of benefits
- S4.2 Return to work in employment in agency
- S4.3 Interaction with other entitlements
- S4.4 Interaction between disputes
- S4.5 Employer must provide procedural fairness
- S4.6 Claims must be made in writing

#### **Part 2 – Definitions**

- S4.7 Average Weekly Earnings
- S4.8 Compensation Act
- S4.9 Benefits or entitlements
- S4.10 Claims income compensation
- S4.11 Eligible employee
- S4.12 Income compensation lump-sum
- S4.13 Independent medical adviser
- S4.14 Injury
- S4.15 Interest
- S4.16 Medical and/or related expenses
- S4.17 Medical expense lump-sum
- S4.18 No current work capacity
- S4.19 Notional Weekly Earnings
- S4.20 Professional Representative
- S4.21 Recognised Health Practitioner
- S4.22 Recovery/return to work plan
- S4.23 Retiring age
- S4.24 RTW Act or Return to Work Act 2014 (SA)
- S4.25 SAET
- S4.26 Seriously injured worker
- S4.27 Suitable employment
- S4.28 WR&C Act

#### **Part 3 – Eligible injuries**

- S4.29 Only eligible employees can have eligible injuries
- S4.30 Temporal connection to employment
- S4.31 Causal connection to criminal conduct or dangerous situations
- S4.32 Incapacity required for eligibility
- S4.33 When an injury ceases to be an eligible injury
- S4.34 When an injury resumes being an eligible injury
- S4.35 Compensation Act status for an injury to be an eligible injury
- S4.36 Compensation Act status when no RTW Act claims or plans
- S4.37 Consequential injuries taken to be part of original eligible injuries
- S4.38 Injuries and incapacity attributable to surgery etc

*Clause No. Subject matter*

#### **Part 4 – Medical Expense Entitlements & Lump Sums**

- S4.39 Medical and related expenses entitlement
- S4.40 Medical expense lump sums
- S4.41 Medical and related expenses - effect of medical expense lump-sum
- S4.42 Medical and related expenses - pre-approval

#### **Part 5 - Income Compensation Entitlements & Lump Sums**

- S4.43 Income compensation entitlement
- S4.44 Work Capacity Review
- S4.45 Income compensation quantum
- S4.46 Income compensation - duration; retirement age
- S4.47 Income compensation - duration; mutuality
- S4.48 Income compensation - duration; work capacity review
- S4.49 Work Capacity Review
  - S4.50 Basis of entitling assessments
  - S4.51 Basis of disentitling assessments
  - S4.52 Work Capacity Reviews and ceasing income compensation
  - S4.53 Work Capacity Reviews and commencing or recommencing income compensation
  - S4.54 First Work Capacity Review: timing
  - S4.55 Payment of income compensation before Work Capacity Review
  - S4.56 Outcome of Work Capacity Review when income compensation paid before Work Capacity Review
  - S4.57 Reassessment
- S4.58 Income compensation - lump-sums may be paid
- S4.59 Income compensation - effect of income compensation lump-sum
- S4.60 Income compensation - economic loss lump-sum payment; notice requirements
- S4.61 Disentitling effect of future economic lump sum compensation
- S4.62 Repayment of prior economic lump sum compensation
- S4.63 Economic loss lump-sums paid after payment of income compensation

#### **Part 6 - Recovery/Return to Work Plans**

- S4.64 Continuing operation of plans established under the RTW Act
- S4.65 When plans are established - entitlement
- S4.66 Content of plans
- S4.67 No unreasonable obligations on eligible officers
- S4.68 Entitlement to reasonable recovery/return to work plan
- S4.69 Employer must provide suitable employment
- S4.70 Nature of suitable employment
- S4.71 Payment for alternative or modified duties

#### **Part 7 – Mutual Obligations**

- S4.72 Employer's obligations
- S4.73 Employee's obligations

#### **Part 8 - Reduction, Discontinuance & Suspension of Income Compensation**

- S4.74 Requirements for discontinuance or reduction of income compensation
- S4.75 28 days written notice required
- S4.76 Suspension of disputed decisions
- S4.77 Excess payments
- S4.78 Rules about recovery or set-off
- S4.79 Employer must provide statements
- S4.80 Interaction between paid annual and/or long service leave and income compensation
  - suspension

*Clause No. Subject matter*

- S4.81 Interaction between paid annual and/or long service leave and income Compensation: notice requirements
- S4.82 Withdrawal of request for paid leave
- S4.83 No compulsion to take leave

**Part 9 – Adjustments to Income Compensation**

- S4.84 Economic adjustments to the level of income compensation
- S4.85 Quantum of economic adjustments - industrial instruments
- S4.86 Notice requirements before economic adjustment decided
- S4.87 Election for economic adjustment based on Wage Price Index
- S4.88 Timing of economic increase based on industrial instrument
- S4.89 Timing of economic increase based on Wage Price Index
- S4.90 Adjustments due to change from original arrangements
- S4.91 Notice requirement
- S4.92 Relevant adjustment to be made
- S4.93 Operative date of adjustments
- S4.94 Requirement to furnish information
- S4.95 Failure to furnish information
- S4.96 Notice of review outcome
- S4.97 Other rights not limited
- S4.98 General Review of weekly payments
- S4.99 Notice requirement
- S4.100 Appropriate adjustments to be made
- S4.101 Requirement to furnish information or submit to medical examination
- S4.102 Failure to comply with requirements
- S4.103 Notice of review outcome

**Part 10 – Decisions on Claims**

- S4.104 Written decisions and content of decisions
- S4.105 Decisions to be made quickly
- S4.106 Applications for expedited decisions
- S4.107 Applications for expedited decisions: timing requirement
- S4.108 SAET powers on application for expedited decision
- S4.109 Claims decided by SAET treated as employer's decision

**Part 11 – Dispute Resolution**

- S4.110 Available jurisdictions and standing
- S4.111 Related proceedings heard together

**Part 12 – Costs of Proceedings**

- S4.112 General entitlement to costs
- S4.113 Costs of specified representation and disbursements only
- S4.114 SAET power to decline to order or reduce costs entitlement
- S4.115 Costs orders for professional advice or assistance
- S4.116 Costs payable for representation by the Union
- S4.117 Limit on legal costs
- S4.118 Costs liability of representatives
- S4.119 Representative default
- S4.120 Procedural fairness before orders against representatives
- S4.121 Notice to clients
- S4.122 Authorised SAET members

*Clause No. Subject matter*

### **Part 13 – Miscellaneous**

- S4.123 Interest on delayed income compensation
- S4.124 Interim payments
- S4.125 Employer's obligation to offer interim payments
- S4.126 Recovery of interim payments
- S4.127 Income Compensation & leave entitlements
- S4.128 Modification of RTW Act s50
- S4.129 Injuries that develop gradually
- S4.130 Costs associated with lump-sum payment agreements
- S4.131 Review & anomalies

### **Attachment One – Recovery/Return to Work Plan**

### **Attachment Two – Lump Sum Agreement to Extinguish Rights**

- Notification to eligible employee
- Annexure "A" – Professional advice
- Annexure "B" – Financial advice
- Annexure "C" – Medical certificate

## **PART 1 – INTRODUCTION**

- S4.1 This Schedule provides benefits to eligible employees with eligible injuries that would have been applicable under the *WR&C Act* if they cease to be entitled to similar benefits under the *RTW Act*.
- S4.2 A return to work within the meaning of the *RTW Act* is the main objective in managing all work injuries. The primary return to work objective will be employment in the employee's agency. New or other return to work options can only be explored when return to work options within the employee's agency have been fully explored (and the onus of proof to establish this lies with the employer) or if the employee requests the exploration of new or other employment options in writing (which request may be withdrawn). The relevant unions will reasonably support and cooperate in the pursuit of this objective.
- S4.3 This Schedule operates in addition to and not instead of any entitlements applicable under any other statute or law, except that:
  - S4.3.1 any payment which would otherwise be payable under This Schedule will not be payable if precisely the same payment has already been made under a Compensation Act: and
  - S4.3.2 if an eligible employee receives a payment for economic loss pursuant to Part 4 Division 6 of the *RTW Act*, clauses S4.60 through S4.63 apply.
- S4.4 Providing the criteria in clauses S4.35 through S4.36 are met, if an entitlement has been claimed by an eligible employee under a Compensation Act and that claim has been rejected, any equivalent or similar entitlement may be claimed, and if rejected, disputed under this Schedule notwithstanding that proceedings relating to the rejected Compensation Act claim are extant. In making such a claim or in any dispute about such a claim, the matter should proceed on the basis that the relevant claim under a Compensation Act shall remain rejected.
- S4.5 If the employer is considering making a decision about an employee's entitlements pursuant to This Schedule which may be adverse to the relevant employee, the employer must provide procedural fairness to the relevant employee before any final decision is made.

S4.6 Claims for entitlements under this Schedule must be made in writing.

## PART 2 – DEFINITIONS IN THIS SCHEDULE

- S4.7 "Average Weekly Earnings" means Average Weekly Earnings under s4(1) of the RTW Act;
- S4.8 "Compensation Act" means either or both or all of the *Workers Rehabilitation and Compensation Act 1986*, the *Return to Work Act 2014*, and any successor legislation to the *Return to Work Act 2014*. Insofar as references in this schedule to "Compensation Act" refer to the *Return to Work Act 2014*, those references are not limited to the *Return to Work Act 2014* as at 1 July 2017.
- S4.9 "Benefits" or "entitlements" means weekly payments of income maintenance or medical and/or like expenses or an entitlement to a reasonable rehabilitation/return to work plan pursuant to this schedule.
- S4.10 "Claims income compensation" means either an express request to be paid income compensation pursuant to this Schedule or, if an eligible employee is in receipt of income compensation pursuant to this schedule, the absence of a request to cease payments of income compensation.
- S4.11 "Eligible employee" means:
- S4.11.1 current and former employees (irrespective of when a former employee's employment ceased); who
- S4.11.2 have had a claim accepted under a Compensation Act;
- but does not include
- S4.11.3 former employees whose employment has been lawfully terminated by the employer on the ground of serious and wilful misconduct and/or criminal conduct.
- S4.12 "Income compensation lump-sum" means a lump sum payment in an agreed amount and on agreed terms and in accordance with attachment 2 to this Schedule to forever end an entitlement to income compensation pursuant to this Schedule in respect of a particular injury or injuries.
- S4.13 "Independent medical adviser" means an independent medical adviser under s4(1) of the *RTW Act*;
- S4.14 "Injury" means an injury within the meaning of s4(1) of the *RTW Act*.
- S4.15 "Interest" means interest calculated in accordance with Regulation 38 of the *Return to Work Regulations 2015* as at 1 July 2017.
- S4.16 "Medical and/or related expenses" means any cost payable or to be payable in respect of costs provided for by s33 of the *RTW Act*, such as services, appliances, medicines, materials, travel and accommodation.
- S4.17 "Medical expense lump-sum" means a lump sum payment in an agreed amount and on agreed terms in accordance with attachment 2 of this Schedule to forever end an entitlement to medical and/or related expense compensation pursuant to this Schedule in respect of a particular injury or injuries.
- S4.18 "No current work capacity" means a present inability arising from the particular eligible injury or the combined effect of one or more eligible injuries such that the eligible employee is not able to return to work, either:

- S4.18.1 if the employer has made and continues to make such work available, in suitable employment in his or her employment at the time of the occurrence of the injury or injuries; or
- S4.18.2 in other suitable employment.
- S4.19 "Notional Weekly Earnings" means the eligible employee's Notional Weekly Earnings under the relevant Compensation Act as adjusted pursuant to Part 9 of this Schedule.
- S4.20 "Professional representative" means a legal practitioner or other person who has been engaged or appointed to represent a party to proceedings before SAET (whether personally or through an employee or agent).
- S4.21 "Recognised health practitioner" means a recognised health practitioner within the meaning of s4(1) of the *RTW Act*;
- S4.22 "Recovery/return to work plan" means a recovery/return to work plan established or continuing under the *RTW Act* or this Schedule.
- S4.23 "Retiring age" means "retiring age" as defined in s44(1) of the *RTW Act*.
- S4.24 "*RTW Act*" or *Return to work Act 2014(SA)* means the *Return to Work Act 2014(SA)* as at 1 July 2017 (and all references to the *RTW Act* and Regulations under that Act are references to that Act and the relevant Regulations as at 1 July 2017, subject to any express contrary intention);
- S4.25 "SAET" means the South Australian Employment Tribunal;
- S4.26 "Seriously injured worker" has the same meaning as under the *RTW Act*;
- S4.27 "Suitable employment" means suitable employment as defined under s4(1) of the *RTW Act*, and a reference to a recovery/return to work plan or services in that provision extends to a recovery/return to work plan or services under this Schedule.
- S4.28 "*WR&C Act*" means the *Workers Rehabilitation and Compensation Act 1986 (SA)*.

### **PART 3 – ELIGIBLE INJURIES**

#### *Only eligible employees can have eligible injuries*

- S4.29 An *injury* is not an eligible injury unless the injured employee is an eligible employee.

#### *Temporal connection to employment*

- S4.30 An eligible injury arises out of or in the course of the eligible employee:

- S4.31.1 attending work in accordance with their employment; or
- S4.31.2 performing the work for which they are employed.

#### *Causal connection to criminal conduct or dangerous situations*

- S4.31 To be an eligible injury the injury *must* have:

- S4.32.1 resulted from conduct directed at the employee that is or appears to be a criminal offence; and/or
- S4.32.2 occurred as a direct and immediate result of conduct that is or appears to be a criminal offence;

S4.32.3 occurred in other circumstances where the employee is placed in a dangerous situation (however psychiatric injuries are only eligible injuries pursuant to 31.3 if they are caused as a consequence of a specific incident or incidents).

Incapacity required for eligibility

S4.32 An eligible injury temporarily or permanently incapacitates the injured employee for work (including because of a need to attend on a medical practitioner for treatment or examination).

When an injury ceases to be an eligible injury

S4.33 An eligible injury ceases to be an eligible injury when:

S4.34.1 the injured employee makes a return to work within the meaning of the RTW Act which is sustainable and is earning a salary or wage that is the same or more than their Notional Weekly Earnings; and

S4.34.2 there is no reasonable basis to incur medical and/or related expenses (whether to treat symptoms or reduce the likelihood of symptoms recurring or for any other reason deemed appropriate by a medical practitioner).

When an injury resumes being an eligible injury

S4.34 If an eligible injury ceased to be an eligible injury pursuant to clause S4.33 but the criteria in clause S4.33 are no longer met, the injury resumes being a eligible injury.

Compensation Act status for an injury to be an eligible injury

S4.35 To be an eligible injury a claim for compensation relating to the injury must have been accepted under a Compensation Act.

S4.36 If, in relation to a particular injury:

S4.37.1 no compensation has been paid under the RTW Act and no Recovery/Return to Work Plan has been established under the RTW Act;

S4.37.2 that injury is only an eligible injury to the extent that the eligible employee would be entitled to receive benefits or entitlements under the *WR & C Act* (disregarding the operation of the *RTW Act*).

Consequential injuries taken to be part of original eligible injuries

S4.37 Any injury arising out of or in the course of an eligible employee's attendance at a place to:

S4.38.1 receive a medical service in relation to an eligible injury; and/or

S4.38.2 obtain a medical report or certificate (or to be examined for that purpose) in relation to an eligible injury; and/or

S4.38.3 receive services or assistance or perform activities intended to assist the eligible employee's recovery or return to work or restoration to the community in relation to an eligible injury; and/or

S4.38.4 apply for, or receive, compensation in relation to an eligible injury;



will be taken to constitute part of the original eligible injury, whether or not the eligible employee had additional reasons for attending at that place (for example, if an injury arose from performing activities at the eligible employee's home recommended by a doctor to assist in recovering from an eligible injury).

*Injuries and incapacity attributable to surgery etc.*

S4.38 Any injury or incapacity attributable to surgery or other treatment or service or advice performed or provided with due care and skill by a person professing to have particular skills and undertaken or provided in relation to an eligible injury will be taken to constitute part of the original eligible injury.

**PART 4 – MEDICAL EXPENSE ENTITLEMENTS AND LUMP SUMS**

*Medical and related expenses entitlement*

S4.39 The employer must pay compensation for medical and/or related expenses incurred in consequence of an eligible injury, whenever any such expenses are incurred. To avoid doubt, an eligible employee's entitlement to medical and/or related expenses does not end only because income compensation payments to the eligible employee cease. However, if a redemption or commutation in respect of medical and/or related expense entitlements arising out of a particular injury or injuries has been paid pursuant to s42 of the *WR&C Act* or s54 of the *RTW Act*, no medical and/or related expenses are payable under this Schedule in relation to that injury or injuries.

*Medical expense lump sums*

S4.40 Medical expense lump sums (in addition to such compensation as is payable for medical and related expenses incurred before receiving a medical expense lump sum payment) may be paid to eligible employees.

*Medical and related expenses – effect of medical expense lump sum*

S4.41 Once an eligible employee has received a medical expense lump sum payment the employer is not obliged to pay compensation for medical and for related expenses pursuant to this schedule if:

S4.42.1 medical and/or related expenses are incurred in consequence of a particular eligible injury after the day when the eligible employee receives a medical expense lump sum payment; and

S4.42.2 a medical expense lump sum payment received by the eligible employee is specifically in respect of that particular eligible injury.

*Medical and related expenses – pre approval*

S4.42 An eligible employee is entitled to a decision by the employer on a claim for compensation for a medical and/or related expense that the eligible employee wishes to incur but is yet to incur. For the avoidance of doubt, a decision to reject such a claim (in whole or in part) is a decision for the purposes of this Schedule.

**PART 5 – INCOME COMPENSATION ENTITLEMENTS & LUMP SUMS**

S4.43 The employer must pay weekly payments of income compensation in respect of incapacity for work (whether partial or total) arising out of an eligible injury in accordance with the following principles. However, if a redemption or commutation in respect of weekly payments arising out of a particular injury or injuries has been paid pursuant to s42 of the *WR&C Act* or s53 of the *RTW Act*, no income compensation is payable under this Schedule in relation to that injury or injuries.

Work capacity review

S4.44 An eligible employee's entitlement to income compensation in respect of a particular eligible injury does not arise without an entitling assessment pursuant to clause S4.49 (work capacity review) and ceases if there is a disentitling assessment pursuant to clause S4.51.

Income compensation – quantum

S4.45 Weekly payments must be paid at the rate of 80% of the eligible employee's Notional Weekly Earnings or, if the eligible employee has actual earnings, 80% of the difference between actual earnings and the eligible employee's Notional Weekly Earnings.

Income compensation – duration

S4.46 An eligible employee's entitlement to income compensation ceases when the eligible employee reaches retiring age.

S4.47 If an eligible employee breaches the obligation of mutuality, the eligible employee's entitlement to income compensation may be discontinued for such time as the eligible employee remains in breach of the obligation of mutuality. An eligible employee resigning (other than on medical advice to resign) after claiming income compensation under this Schedule breaches mutuality. Lawful termination of employment by the employer on the ground of serious and wilful misconduct and/or criminal conduct breaches mutuality.

S4.48 An eligible employee's entitlement to income compensation may be discontinued if there is a disentitling assessment on a work capacity review.

Work Capacity Review

S4.49 An eligible employee's entitlement to receive income compensation does not commence unless the eligible employee is assessed in relation to the cumulative effect of one or more eligible injuries (an **entitling assessment**) by the employer as:

S4.50.1 having no current work capacity; and

S4.50.2 likely to continue indefinitely to have no current work capacity; or

S4.50.3 being in employment but because of the injury is likely to continue indefinitely to be incapable of undertaking further or additional employment or work that would increase the eligible employee's current weekly earnings.

S4.50 The employer may make an entitling assessment on any basis.

S4.51 A **disentitling assessment** is an assessment that the eligible employee does not meet the criteria in clause S4.49. A disentitling assessment can only be made if:

S4.52.1 the employer has sought and obtained an opinion from an IMA (whose expertise is appropriate to the particular injury) about whether the eligible employee meets the criteria in clause S4.49; and

S4.52.2 if the eligible employee has earnings in employment or other work, the IMA considers that notwithstanding the eligible injury or injuries the eligible employee is, and is likely to continue indefinitely to be, capable of undertaking further or additional employment or work which would increase the eligible employee's earnings, and specifies what that additional employment or work is; and

S4.52.3 the IMA provides a written opinion that the eligible employee does not meet the criteria in clause S4.49; and

- S4.52.4 if the eligible employee has earnings in employment or other work, the IMA specifies on reasonable grounds the additional employment or work the IMA considers that the eligible employee could do to increase their earnings.

Work capacity review & ceasing income compensation

- S4.52 An eligible employee receiving income compensation under this schedule shall continue to receive income compensation under this schedule until at least 13 weeks after the eligible employee receives written notification from the employer that the eligible employee is no longer entitled to receive income compensation under this Schedule because of a disentitling assessment.

Work capacity reviews & commencing or recommencing income compensation

- S4.53 If an eligible employee who is not receiving income compensation under this Schedule or a Compensation Act claims income compensation the employer is not obliged to pay income compensation under this Schedule until an entitling assessment is made. In those circumstances, if an entitling assessment is made the eligible employee is entitled to arrears and interest for all periods when they are entitled to income compensation.

First work capacity review: timing

- S4.54 A work capacity review may be performed before or after an eligible employee has exhausted their entitlement to weekly payments under a Compensation Act.

- S4.55 An eligible employee who, immediately before the end of the second designated period defined in s39 of the RTW Act, was in receipt of weekly payments under the RTW Act is entitled to receive income compensation pursuant to this Schedule at the same rate unless and until a work capacity review is conducted.

- S4.56 If clause S4.55 applies and the outcome of the work capacity review is:

- S4.57.1 an **entitling assessment**, the employer must conduct reviews in accordance with Part 9 of this Schedule and adjust the eligible employee's income compensation accordingly;

- S4.57.2 a **disentitling assessment**, Clause S4.52 and Part 8 of this Schedule apply.

Reassessment

- S4.57 An eligible employee's work capacity may be reassessed consistent with clause S4.49 through 51 at any reasonable time and must be reassessed as often as is reasonably necessary.

Income compensation – effect of income compensation lump sum

- S4.58 An income compensation lump sum (in addition to such compensation as is payable for income compensation before receiving an income compensation lump sum payment) may be paid to eligible employees.

- S4.59 Once an eligible employee has received an income compensation lump sum payment the employer is not obliged to pay weekly payments pursuant to this Schedule if:

- S4.60.1 an entitlement to income compensation in consequence of a particular eligible injury arises after the day when the eligible employee receives an income compensation lump sum payment; and

- S4.60.2 an income compensation lump sum payment received by the eligible employee is specifically in respect of that particular eligible injury.

Income compensation – effect of lump sum payment for economic loss

- S4.60 If this Award applies to an employee who claims compensation pursuant to Part 4 Division 6 of the *RTW Act*, before paying any such compensation the employer must:
- S4.60.1 give the employee written notice of:
- S4.60.1.1 the dollar amount of compensation the employer says the employee is entitled to; and
- S4.60.1.1 clause S4.60 through S4.63 of this Schedule; and
- S4.60.2 request written confirmation from the employee that, having regard to clauses S4.60 through 63 of this Schedule, they wish to be paid compensation pursuant to Part 4, Division 6 of the *RTW Act* and allow a reasonable time for the employee to respond in writing.
- S4.61 If an eligible employee has received a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**) 3 months or more after this Schedule is inserted into the Award the eligible employee is not entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to.
- S4.62 If an eligible employee has received a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**) before 3 months after this Schedule is inserted into the Award, the eligible employee is not entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to unless they agree in writing to repay the payment and comply with that agreement, with repayments to be made by periodic payments in accordance with clause S4.78.1 unless otherwise agreed in writing.
- S4.63 If an eligible employee has received income compensation pursuant to this Schedule and then receives a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**):
- S4.63.1 the eligible employee ceases to be entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to; and
- S4.63.2 the employer is entitled to deduct from the payment any income compensation previously paid to the eligible employee pursuant to this Schedule in relation to the same injury or injuries that the payment related to.

**PART 6 – RECOVERY/RETURN TO WORK PLANS**

Continuing operation of plans established under the *RTW Act*

- S4.64 If a recovery/return to work plan established under s25 of the *RTW Act* has not reached its completion date or action when entitlements under this Schedule arise, it continues to operate by virtue of this Schedule irrespective of whether the *RTW Act* authorises its continued operation until the date or action the plan is expressed to conclude on, unless the eligible employee and the employer agree that the plan should cease operation or be varied or if SAET determines that the plan should cease operation or be varied.

When plans are established – entitlement

S4.65 If it is reasonable to do so, the employer may establish a written recovery/return to work plan in relation to an eligible employee who has an eligible injury. If an eligible employee's entitlements under this Schedule are not exhausted, the employer must establish a written recovery/return to work plan if the eligible employee requests such a plan in writing.

Content of plans

S4.66 A recovery/return to work plan may provide for any assistance, service, payments or return to work arrangement that may reasonably assist the full restoration of the eligible employee to the workforce and/or the community, including by alleviating the impact of the disability so far as is possible. A recovery/return to work plan must assist the full restoration of the eligible employee to the workforce and/or the community, including by alleviating the impact of the disability, so far as is reasonable practicable, and must be in accordance with Attachment 1 to this Schedule.

S4.67 Recovery/return to work plans under this Schedule may not impose unreasonable obligations on eligible employees.

S4.68 An eligible employee whose entitlements under this Schedule are not exhausted is entitled to a reasonable recovery/return to work plan if the employer establishes a recovery/return to work plan or if the employee requests a recovery/return to work plan.

S4.69 If:

S4.69.1 an eligible employee who has been incapacitated for work in consequence of an eligible injury is able to return to work, whether on a full time or part time basis and whether or not to his or her previous employment;

S4.69.2 the employer must provide suitable employment for the eligible employee (the employment being employment for which the eligible employee is fit and subject to that qualification employment which is, so far as reasonably practicable the same as, or equivalent to, the employment in which the eligible employee was working immediately before the incapacity) as part of a recovery/return to work plan;

S4.69.3 if the eligible employee requests it, but not if it is not reasonably practicable to provide such employment (and the onus of establishing that lies on the employer); or

S4.69.4 the eligible employee left the employment of the employer before the commencement of the incapacity for work; or

S4.69.5 the eligible employee terminated the employment after the commencement of the incapacity for work; or

S4.69.6 new or other employment options and any ancillary matters have been agreed and remain agreed between the eligible employee and employer and are contained in a current recovery/return to work plan; or

S4.69.7 the eligible employee has otherwise sustainably returned to work earning at or above the eligible employee's Notional Weekly Earnings.

S4.70 Suitable employment to be provided by the employer includes employment in respect of which the number of hours each day or week that the employee performs work or the range of duties the employee performs is suitably increased in stages.

- S4.71 If all eligible employee performs alternative or modified duties pursuant to a recovery/return to work plan, the employer must pay an appropriate wage or salary in respect of those duties.

#### **PART 7 – MUTUAL OBLIGATIONS**

- S4.72 When an eligible employee is entitled to receive benefits pursuant to this Schedule the employer must reasonably:
- S4.72.1 manage the eligible employee's injury; and
  - S4.72.2 provide services and assistance to further the eligible employee's recovery and return to work and/or the community and to alleviate the impact of the disability so far as is possible; and
  - S4.72.3 at the employee's request, review any service/s or entitlements provided pursuant to this Schedule and/or investigate any matter, if it appears to the employee that the employer may not be complying with this Schedule and provide the employee with written advice about the outcome of any such review or investigation and any actions the employer will take arising out of any such review or investigation.
- S4.73 An employee receiving income compensation under this Schedule must not breach the obligation of mutuality defined by s48(3) and (4) of the *RTW Act*. If an employee breaches mutuality, mutuality may be restored in accordance with the principles application under the *RTW Act*. A breach of mutuality does not alter the employee's entitlement to compensation for medical and/or related expenses.

#### **PART 8 – REDUCTION, DISCONTINUANCE & SUSPENSION OF INCOME COMPENSATION**

- S4.74 If an eligible employee's entitlement to income compensation under this Schedule ceases or will cease or reduces or will reduce (including because the employee has ceased to be an eligible employee), payments of income compensation may only be discontinued or reduced in accordance with this Part.
- S4.75 Unless clause S4.52 applies (work capacity reviews – 13 weeks' notice), no cessation or reduction of payments of income compensation may occur until the employee has received at least 28 days written notice of any such cessation or reduction.
- S4.76 If a person disputes a decision to reduce, discontinue or suspend their payments of income compensation (by either an application to SAET or the invocation of a dispute resolution procedure in this Award or an applicable enterprise agreement) within one month of the person receiving notice of a decision by the employer to reduce, discontinue or suspend income compensation under this Schedule:
- S4.76.1 the operation of the decision is suspended and –
    - S4.76.1.1 income compensation must continue or, if the decision has already taken effect, the income compensation must be reinstated (to its previous level), until the matter first comes before a member of SAET; and
    - S4.76.1.2 the employer must make a payment to the person of any income compensation that has not been made between the date that the decision took effect and the date the income compensation is reinstated:
    - S4.76.1.3 unless the person elects in writing not to receive payments under this clause; and
  - S4.76.2 SAET may as it thinks fit and from time to time, and after having regard to the nature and circumstances of the case:

- S4.76.2.1 further suspend the operation of the decision (from time to time) until the dispute is resolved to avoid the person suffering financial hardship and extra weight must be given to the desirability of requiring the continuation of payments if SAET considers it is reasonably open to the person to dispute the relevant decision;
- S4.76.2.2 vary or revoke a decision under this clause, including to provide that weekly payments will only continue, or continue at a reduced rate, if the person complies with conditions determined by SAET;
- S4.76.2.3 make an order to pay an amount relating to all or any weekly payments that have not been made to the employee during the dispute.
- S4.77 If a dispute is ultimately resolved in favour of the employer and the person has been paid more than the person's lawful entitlements to income compensation pursuant to clause S4.76, the employer may, at the employer's discretion (but subject to this Schedule):
- S4.77.1 recover the excess (and any interest on the excess) from the employee as a debt; or
- S4.77.2 set off the amount recoverable under clause S4.77.1 against liabilities of the employer to pay the employee under this Schedule or a Compensation Act.
- S4.78 If it is reasonable in the circumstances, the employer may set off or recover an amount under clause S4.77.1 as a single lump sum, or by periodic payments, or by a combination of a lump sum and periodic payments, or in some other manner agreed between the employer and the person in writing, however:
- S4.78.1 the employer cannot require a person to make periodic payments exceeding 10% of the person's net income ("net income" means income after the appropriate deduction is made for any income tax and child support payable by the person and any deductions made because of a garnishee order or similar order or requirement or any other deduction imposed by statute) without the person's written agreement;
- S4.78.2 the employer may, in its absolute discretion, waive (absolutely or subject to such conditions as the employer thinks fit) the whole or any part of an amount it is entitled to recover, and shall do so if:
- S4.78.2.1 the employer is satisfied that the person is experiencing severe financial hardship, or it appears appropriate to do so because of any other special circumstances specific to the person; or
- S4.78.2.2 the employer considers it appropriate considering the likely costs associated with recovering the amount and the amount itself;
- S4.78.3 unless the person has provided materially false or misleading information to the employer that caused the employer to make the relevant payment/s, the employer must grant these remissions if the total amount payable is repaid within the following periods:
- S4.78.3.1 a 15% remission if the total amount is repaid within 1 month of the person first receiving written notification of the amount they are liable to pay;
- S4.78.3.2 a 10% remission if the total amount is repaid within 6 months of the person first receiving written notification of the amount they are liable to pay.
- S4.79 If a person has made a payment (including by an amount being set off) to the employer under clause S4.78 the employer must, within two months of the end of the

financial year in which the payment is made, furnish the person with a statement that sets out:

- S4.79.1 the total amount paid by the person during that financial year; and
- S4.79.2 the amount left to be paid (if any); and
- S4.79.3 must furnish a final statement within 2 months after the debt is extinguished.

Interaction between paid annual and/or long service leave and income compensation – suspension

- S4.80 If an eligible employee takes paid annual or long service leave, the employer may suspend the income compensation that would otherwise be payable to the eligible employee when the eligible employee is on that leave if the employer complies with the notice requirements of this clause.
- S4.81 If the employer proposes to suspend the income compensation that would otherwise be payable during such a period of leave, the employer must provide the eligible employee with written notice of that proposal (including details of when income compensation payments under this Schedule will resume) within 14 days of the eligible employee requesting the relevant paid leave.
- S4.82 The eligible employee may withdraw the request for paid leave at any time within 14 days of a written notice under clause S4.81.
- S4.83 The employer cannot compel an eligible employee to take leave when they are entitled to income compensation.

**PART 9 – ADJUSTMENTS TO INCOME COMPENSATION**

Economic adjustments to the level of income compensation

- S4.84 If an eligible employee is incapacitated for work or appears likely to be incapacitated for work for more than one year, the employer must, during each year of incapacity, review the income compensation for the purpose of making an adjustment to the amount of the income compensation under this Part.

Quantum of economic adjustments – industrial instruments

- S4.85 Subject to clause S4.87, the Notional Weekly Earnings of an eligible employee who is entitled to income compensation shall be adjusted to reflect any increase in the rates of remuneration applicable to the classification held by the employee (or where relevant, any successor classification) immediately prior to the particular injury occurring and prescribed by an award or enterprise agreement.

Notice requirements before economic adjustment decided

- S4.86 At least 28 days before deciding the quantum of an economic adjustment pursuant to this clause, the employer must give the eligible employee written notice of the following:
  - S4.86.1 The increase in the rate of remuneration the employer says applies pursuant to clause S4.85 and how the proposed economic adjustment has been calculated by applying that increase to the eligible employee's pre-existing Notional Weekly Earnings.
  - S4.86.2 The increase in the rate of remuneration the employer says would be applicable if an economic adjustment was made in accordance with the Wage Price Index for total hourly rates of pay excluding bonuses for South Australia, and how an economic adjustment would be calculated by applying that increase to the eligible



employee's pre-existing Notional Weekly Earnings, and the eligible employee's right to elect in writing to receive an economic adjustment on that basis rather than in accordance with clause S4.85.

- S4.86.3 The eligible employee's right to make written representations to the employer on the review within a reasonable time specified in the notice.

*Election for economic adjustment based on Wage Price Index not Industrial Instrument*

- S4.87 If an eligible employee elects in writing to have their Notional Weekly Earnings adjusted in accordance with the Wage Price Index for total hourly rates of pay excluding bonuses for South Australia, the employer must adjust the eligible employee's Notional Weekly Earnings accordingly.

*Timing of economic increase based on Industrial Instrument*

- S4.88 An economic increase reflecting changes to remuneration in an award or enterprise agreement operates from the date of the employer's decision on the review, back-dated to the date of the relevant changes in rates of remuneration.

*Timing of economic increase based on Wage Price Index*

- S4.89 An economic increase in accordance with clause S4.87 operates from the end of the year of incapacity in which the review is made.

*Adjustments due to change from original arrangements*

- S4.90 The employer may, on its own initiative and must at the written request of an eligible employee, review the calculation of the Average Weekly Earnings of the eligible employee (and therefore the Notional Weekly Earnings of the eligible employee) for the purpose of making an adjustment due to:

- S4.90.1 a change in a component of the eligible employee's remuneration used to determine Average Weekly Earnings (including a component constituted by a non-cash benefit); or

- S4.90.2 a change in the equipment or facilities provided or made available to the eligible employee (if relevant to Average Weekly Earnings).

- S4.91 Before the employer begins a review under clause S4.90, the employer must give the eligible employee written notice informing the eligible employee of the proposed review and inviting the eligible employee to make written representations to the employer on the subject of the review within a reasonable time specified in the notice.

- S4.92 If the employer finds on a review under clause S4.90 that there has been a change that warrants an adjustment contemplated by clause S4.90, the employer shall make the relevant adjustment.

- S4.93 An adjustment under clause S4.90:

- S4.93.1 will take effect as an adjustment to the eligible employee's Notional Weekly Earnings (and may therefore increase or reduce income compensation under this Schedule); and

- S4.93.2 operates from an appropriate date determined by the employer (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in income compensation.
- S4.94 For the purpose of a review under clause S4.90, the employer may, by notice in writing to the eligible employee to whom the review relates, require the eligible employee to furnish any information that the employer reasonably determines to be relevant to the review.
- S4.95 If an eligible employee fails to comply with a requirement under clause S4.94 within the time allowed in the notice, the employer may suspend income compensation payments to the eligible employee.
- S4.96 On completing a review under clause S4.90, the employer must give the eligible employee written notice setting out the employer's decision on the review and the eligible employee's right to dispute the employer's decision.
- S4.97 Clauses S4.90 through S4.103 do not limit the rights of the employer under any other clause of this Schedule.

General Review of weekly payments

- S4.98 The employer may, on its own initiative, and must if requested in writing by an eligible employee, review the amount of the weekly payments made to an eligible employee. The employer is not required to comply with a request for such a review if the request is made within 3 months of the completion of an earlier review.
- S4.99 If the employer begins a clause S4.98 review under this clause, the employer must give the eligible employee written notice informing the eligible employee of the proposed review and inviting the eligible employee to make a written representation to the employer on the subject of the review within a reasonable time specified in the notice.
- S4.100 If the employer finds on a clause S4.98 review that the eligible employee's entitlement to income compensation has ceased, or has increased or decreased, the employer must adjust and may discontinue the income compensation to reflect that finding.
- S4.101 For the purpose of a clause S4.98 review, the employer may, by notice in writing to an eligible employee who is receiving weekly payments, require the eligible employee to submit to an examination by an IMA nominated by the employer or require the eligible employee to furnish evidence of the eligible employee's earnings (other than earnings paid by the employer).
- S4.102 If an eligible employee fails to comply with a requirement under clause S4.101 within the time allowed in the notice, the employer may suspend income compensation payments to the eligible employee.
- S4.103 On completing a clause S4.98 review, the employer must give the eligible employee written notice setting out the employer's decision on the review, and the eligible employee's rights to dispute the employer's decision, in accordance with clause S4.104.

**PART 10 – DECISIONS ON CLAIMS**

- S4.104 The employer must provide its written decision on a claim for entitlements under this Schedule (including a decision to cease or reduce or suspend income compensation and decisions to review income compensation and decisions on recovery/return to work plans) to the person who made the claim (including by their representative). The written decision must include the information required by s31(8)(b) of the *RTW Act* and regulation 20 of the *RTW Regulations*.

- S4.105 The employer must decide claims for entitlements under this Schedule (including claims for the provision of a recovery/return to work plan) as quickly as reasonable practicable and where the claim is for income compensation must, wherever practicable, endeavour to decide the claim within 10 business days from receipt of the claim.
- S4.106 A person who believes there has been undue delay in deciding a claim or other matter affecting the person under this Schedule may apply to SAET for expedited determination of the matter.
- S4.107 An application for an expedited determination of a matter cannot be made until at least 10 business days after the matter was placed before the relevant decision maker.
- S4.108 On an application for expedited determination of a matter, SAET may (in addition to such other powers as SAET may have) give directions SAET considers necessary to expedite the determination of the matter or decide the matter itself.
- S4.109 If SAET decides a claim on an application for expedited decision, the decision is to be treated as a decision of the employer.

### **PART 11 – DISPUTE RESOLUTION**

- S4.110 For the avoidance of doubt and without limiting such other legal rights as the employer and a person claiming an entitlement under this Schedule may have:
- S4.110.1 disputes over the employer's decisions on entitlements under this Schedule may be resolved pursuant to chapter two part one of the Fair Work Act 1994 and/or chapter two part two of the Fair Work Act 1994 (including concurrently) and any successor legislation to those provisions; and
- S4.110.2 proceedings and dispute resolution processes taking issue with the employer's decision/s on entitlements under this Schedule may be commenced by either the person claiming the entitlement or his or her union.
- S4.111 Proceedings in the SAET about the employer's decision/s on entitlements under this Schedule should, so far as is reasonable practicable, be heard together with such other proceedings between the same parties in the SAET as may exist.

### **PART 12 – COSTS OF PROCEEDINGS**

#### General Entitlement to Costs

- S4.112 A party (other than the employer) is entitled, subject to this Schedule, to an award against the employer for the party's reasonable costs of proceedings for resolution of the matter before SAET.
- S4.113 Costs may also be awarded to cover the cost of representation by a legal practitioner or an employee or employee of the employee's union and disbursements incurred by a party to proceedings before SAET up to a reasonable amount reasonable incurred, subject to the qualification that costs for medical services reimbursed as disbursements in the proceedings are limited to the scale of charges applicable at the relevant time that apply for the purposes of s33 of the *RTW Act* or, if a service is not covered by a scale of charges under that section, to an amount determined in accordance with the principles under that section.
- S4.114 If SAET is of the opinion that a party:
- S4.114.1 has acted unreasonably:

- S.114.1.1 in bringing proceedings before SAET; or
- S114.1.2 in view of an assessment or recommendation of a SAET member under s43(13) of the *South Australian Employment Tribunal Act 2014*; or
- S114.1.3 without limiting clause S4.114.1.2, in failing to discontinue or settle any proceedings before the conclusion of the hearing of a matter; or
- S114.1.4 in relation to any other aspect of the conduct of proceedings before SAET; or
- S114.2 has acted frivolously or vexatiously in bringing or in relation to the conduct of proceedings before SAET;
- SAET may:
- S114.3 decline to make an award of costs in favour of the party and may further (if it thinks fit) make an award of costs against the party; or
- S114.4 reduce the amount of the award of costs to which the party would otherwise have been entitled.
- S4.115 Subject to clause S4.116, an award of costs to cover professional advice or assistance may, if SAET considers appropriate, be made in favour of the person who provided the professional advice or assistance.
- S4.116 An award of costs to cover the cost of representation by an employee or employee's union is payable to the union.
- S4.117 An award of legal costs cannot exceed 85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

*Costs liability of representatives*

- S4.118 If a professional representative acting for a party to proceedings before SAET under this Schedule (whether personally or through an employee or agent) has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default, SAET may order:
- S4.118.1 that all or any of the costs between the professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;
- S4.118.2 that the professional representative pay to his or her client all or any of the costs which his or her client has been ordered to pay to any party;
- S4.118.3 that the professional representative pay all or any of the costs of any party other than his or her client.
- S4.119 Without limiting clause S4.118, a professional representative is in default for the purposes of that subclause if any proceedings cannot conveniently be heard or proceed, or fail or are adjourned without any useful progress being made, because the professional representative failed to:
- S4.119.1 attend in person or by a proper representative; or
- S4.119.2 file any document which ought to have been filed; or
- S4.119.3 lodge or deliver any document for the use of SAET which ought to have been lodged or delivered; or
- S4.119.4 be prepared with any proper evidence or account; or

S4.119.5 otherwise proceed.

S4.120 SAET may not make an order against a professional representative under clause S4.118 unless SAET has informed the professional representative of the nature of the order proposed and allowed the professional representative a reasonable opportunity to make representations, and call evidence, in relation to the matter.

S4.121 SAET may order that notice of any proceedings or order against a professional representative under clause S4.118 be given to the client in such manner as SAET directs.

S4.122 SAET's power to make an order under clause S4.118 is exercisable by a presidential member of SAET or another member of SAET who is authorised by a presidential member of SAET to make the particular order.

### **PART 13 – MISCELLANEOUS**

#### Interest on Delayed Income Compensation

S4.123 If:

S4.123.1 Income compensation, or part of income compensation, is not paid as and when require to be paid under this Schedule; or

S4.123.2 the payment of income compensation is delayed pending resolution of a dispute over the employer's decision/s on an entitlement to income compensation under this Schedule; then

S4.123.3 interest will be paid on any arrears, however, no interest is payable under this clause if the delay is attributable to some fault on the part of the eligible employee.

#### Interim payments

S4.124 A person may, pending the final determination of a claim, apply to the employer for interim payments of income compensation under this Schedule.

S4.125 The employer must offer to make interim payments if it fails to determine the relevant claim within 10 business days after tile date of receipt of the claim unless the failure to determine the claim is:

S4.124.1 due to the unreasonable failure or refusal of the person making the claim to attend a medical examination arranged by the employer; or

S4.124.2 because the employer has arranged an examination for the purposes of a work capacity review and that examination is yet to occur.

S4.126 If on the final determination of a claim (if the employer rejects the claim, the claim is finally determined when any relevant proceedings have been completely finalised) an amount the employee was not entitled to has been paid under this clause, the employer may recover that amount as a debt in a Court of competent jurisdiction.

#### Income Compensation and Leave Entitlements

S4.127 Section 50 of the *RTW Act* is incorporated into this Schedule. To the extent that s50 of the *RTW Act* is inconsistent with clauses S4.80 through S4.83, those clauses prevail.

S4.128 The references to "weekly payments" in s50 of the *RTW Act* as incorporated into this Schedule are to be read as references to income compensation pursuant to this Schedule.

Injuries that develop gradually

S4.129 The date when an injury that develops gradually or is a disease will be taken to have occurred will be determined in accordance with *RTW Act* s188.

Costs associated with lump sum payment agreements

S4.130 If the employer offers an eligible employee a lump sum payment agreement, and the eligible employee incurs costs in having one or more of annexures A, B or C to such an agreement completed by a professional adviser, a financial adviser or a recognised health practitioner, the employer must reimburse the eligible employee for any such costs subject to any limits applicable at the time the relevant advice is obtained pursuant to ss53 and 54 of the *RTW Act*.

Review & anomalies

S4.131 The employer and the relevant unions parties to the Award and the employer shall:

S4.131.1 jointly review the operation of this Schedule with that review to commence 2 years after the order incorporating this Schedule in this Award is made and to conclude within 2 months of commencement; and

S4.131.2 use their best endeavours to resolve perceived anomalies or perceived unfair situations arising out of the operation of this Schedule or the alteration to the rights of employees arising out of the change from the *WR&C Act* to the *RTW Act*.

**SCHEDULE 4**

**ATTACHMENT 1**

**RECOVERY/RETURN TO WORK PLAN**

**Recovery/Return to Work Plan**

**No:**

Boxes marked \* MUST be completed in full. This is not a prescribed or designated form.

**Details**

|  |                         |
|--|-------------------------|
| Commencement date/action:  | Completion date/action: |
| *Worker's full name:   | *Claim no:              |
| Pre-injury occupation:   | *Date of birth:         |
| *Pre-injury employer:  | *Date of injury:        |
| Return to work coordinator:  | *Nature of injury:      |
| Is an interpreter required? Yes <input type="checkbox"/> No <input type="checkbox"/> | Preferred language:     |

**Objectives:**

**Mandatory:** Select at least one of the following objectives

- (i) The worker's return to the pre-injury employment with the pre-injury employer;
- (ii) The worker's return to different employment with the pre-injury employer;
- (iii) The worker's return to the pre-injury employment but with a different employer;
- (iv) The worker's return to different employment with a different employer;
- (v) The worker's return to independence within the community;

| Goal(s): | Actions and services required to meet the goals and objectives of this recovery/return to work plan | By whom (name)<br>By when (date) |
|----------|---|----------------------------------|
|          |   |                                  |
|          |   |                                  |
|          |   |                                  |

**Hourly wage rate to be paid by employer (section 19 –Payment of wages for alternative or modified duties): \$**

If an eligible employee who has been incapacitated for work in consequence of a work injury undertakes alternative or modified duties under employment or an arrangement that falls outside the eligible employee's contract of service for the employment from which the injury arose, the employer must pay an appropriate wage or salary in respect of those duties.

| Stay at work/return to work arrangements: |    |      |       |                 |                             |                   |
|---|----|------|-------|-----------------|-----------------------------|-------------------|
| From                                      | To | Days | Hours | Work activities | Considerations/Restrictions | Supervisor (name) |
|   |    |      |       |                 |                             |                   |
|   |    |      |       |                 |                             |                   |
|   |    |      |       |                 |                             |                   |
|   |    |      |       |                 |                             |                   |

**Important Notice to Eligible Employees**

- A failure to comply with an obligation under a recovery/return to work plan may lead to the discontinuance of weekly payments (see section 48(3)(d)(ii) of the Return to Work Act 2014);
- An application for a review of a provision of a recovery/return to work plan may be made but it does not suspend obligations imposed by the plan pending a determination of the review;
- A refusal or failure to undertake work that has been offered and that the worker is capable of performing, or to take reasonable steps to find or obtain suitable employment, may lead to the discontinuance of payments (see section 48 of the Return to Work Act 2014). This may also occur if a worker obtains suitable employment and then unreasonably discontinues the employment.

**Preparation details**

|                                 |            |
|---------------------------------|------------|
| Prepared by:                    | Telephone: |
| Position:                       | Email:     |
| Relevant comments by any party: |            |

**Agreement** (a signature confirms the party has been consulted in preparing this recovery/return to work plan)

| Parties involved  | Print name | Signature (or reason if none) | Date |
|-------------------|------------|-------------------------------|------|
| Eligible Employee |            |                               |      |
| Employer          |            |                               |      |
| Treating Doctor   |            |                               |      |

**Established/Approved**

Recovery/return to work plan:  Approved  Not approved

|                    |                      |      |
|--------------------|----------------------|------|
| Employer Signature | Initials and surname | Date |
| Employer Comments: |                      |      |



**SCHEDULE 4**

**ATTACHMENT 2**

**LUMP SUM AGREEMENT  
TO  
EXTINGUISH RIGHTS**

[to income compensation and/or medical and/or related expense compensation]  
(amend as appropriate)

**Pursuant to Schedule 4 of the Intellectual Disability Services Award**

This is an agreement between:

[insert eligible employee's name]  
"the eligible employee"

And

Chief Executive of the Department of the Premier and Cabinet  
"the employer"

**Background**

1. The eligible employee suffered an injury or injuries as follows (the injury or injuries):

| Injury Date | Injury Description |
|-------------|--------------------|
|             |                    |
|             |                    |

2. The employer has undischarged liabilities to the eligible employee to pay income compensation and compensation for medical and/or related expenses [delete "income compensation and" if appropriate] in respect of the injury or injuries in accordance with Schedule 4 of the Intellectual Disability Services Award (**the undischarged liabilities**).
3. Noting that no lump-sum payment agreement can be finalised unless the eligible employee has received competent professional advice about the consequences of this agreement, the eligible employee has received such advice, as appears from Annexure "A".
4. Noting that no lump-sum payment agreement can be finalised unless the eligible employee has received competent financial advice about the investment or use of the lump sum payment, the eligible employee has received such advice, as appears from Annexure "B".
5. Noting that no lump-sum payment agreement can be finalised unless a recognised health practitioner has certified that the extent of the eligible employee's incapacity resulting from the Injury or Injuries can be determined with a reasonable degree of confidence and has advised the eligible employee about the future medical assistance of any kind that the eligible officer will or is likely to require on account of the Injury or Injuries and any related surgery, treatment or condition, a recognised health practitioner has so certified and has so advised as appears from Annexure "C".

- 6. The eligible employee and the employer have reached an agreement for the employer to pay a lump sum to the eligible employee which payment will extinguish the undischarged liabilities.

**THE ELIGIBLE EMPLOYEE AND THE EMPLOYER HEREBY AGREE AND ACKNOWLEDGE**

- 7. That the matters set out in paragraphs 1 through 6 of this agreement are true and correct to the best of the eligible employee's and the employer's knowledge, understanding and belief.
- 8. That the employer's undischarged liabilities to pay [income compensation and – delete if inapplicable] medical and/or related expense compensation be extinguished by a capital payment of [insert dollar figure] [comprised of [insert dollar figure] to extinguish the undischarged liability for income compensation and [insert dollar figure] to extinguish the undischarged liability for medical and/or related expenses] [the passage commencing "comprised of" and concluding "related expenses" must be deleted if the lump sum agreement extinguishes medical and/or related expense entitlements only].
- 9. The eligible employee ACKNOWLEDGES that on receipt of the capital payment detailed in the preceding paragraph the undischarged liability to the eligible employee set out in paragraph 2 of this agreement is forever extinguished.

**DATED** the                    day of                    20.....

**SIGNED** by the eligible employee [insert name] ) .....

..... )  
 ) .....  
 ) Date and time signed by eligible  
 employee

in the presence of: )  
 ) .....

**SIGNED** for and on behalf of **Chief Executive of the Department of the Premier and Cabinet** by .....  
 [insert name of authorised signatory to the employer]

(signature) .....

.....  
Date

in the presence of: (signature) .....

.....  
Date

**NOTIFICATION TO ELIGIBLE EMPLOYEE**

Under Section 33A of the *Health and Other Services (Compensation) Act 1995* (Medicare Act), you are advised that the employer intends to make an advance payment under Section 338 of the Medicare Act for compensation payable under a judgment or settlement as follows:

1. The employer intends to make an advance payment to the Commonwealth.
2. The amount of the advance payment will be 10% of the total redemption [insert dollar figure].
3. The Commonwealth can retain some or all of the advance payment for eligible benefits paid by the Commonwealth in respect of services and care rendered or provided in the course of treatment for, or as a result of, your compensable injury or injuries. If the amount specified in the notice under Section 33C of the Act is less than the amount of advance payment, the difference is payable by the Commonwealth to you.
4. You will be required to make an additional payment to the Commonwealth in respect of the eligible benefits if the amount specified by the written notice given to you under Section 33C of the Act is greater than the amount of the advance payment.

I acknowledge receipt of the above advice.

[insert name of eligible employee]

.....  
Date

**ANNEXURE "A"**

**PROFESSIONAL ADVICE**

**SUBJECT: lump sum payment agreement under Schedule 4 of the Intellectual Disability Services Award**

I, [insert name of eligible employee], have received competent professional advice about the consequence of a lump-sum payment in the amount of

..... from .....

I have received advice on matters including the following:

- A. That on receipt of this lump-sum payment I have no entitlement to income compensation in respect of dates on or after receipt of that payment or payment of medical and/or related expenses incurred on or after receipt of that payment in relation to my injury/injuries described in paragraph 1 of the lump sum payment agreement.
- B. That on receipt of lump-sum payment in respect of medical and/or related expenses I may not be able to claim medical benefits from Medicare nor my health fund for treatment regarding my injury/injuries described in paragraph 1 of the lump sum payment agreement.
- C. Taxation implications of the lump sum payment, if any. In particular, I have been advised that it may seek a private ruling in accordance with the Income Tax Assessment Act 1997.
- D. Centrelink implications in relation to the lump-sum payment.

[Insert name of eligible employee]

Adviser's name

[Insert address of eligible employee]  
address:

Adviser's Company name and

.....  
Eligible employee's signature

.....  
Adviser's Signature

.....  
Date and time signed by eligible employee

.....  
Date and time signed by adviser:

**ANNEXURE "B"**

**FINANCIAL ADVICE**

**SUBJECT: Lump-sum payment agreement under Schedule 4 of the Intellectual Disability Services Award**

I, [Insert name of eligible employee] have received competent financial advice from

.....

About the investment or use of the lump-sum payment of [insert dollar figure]. I am satisfied the advice is appropriate to my circumstances

[Insert name of eligible employee]

Adviser's Name:

[Insert address of eligible employee]  
address:

Adviser's Company name and

.....  
Eligible employee's signature

.....  
Adviser's Signature

.....  
Date and time signed by eligible employee:

.....  
Date and time signed by adviser:

**ANNEXURE "C"**

**MEDICAL CERTIFICATE**

**SUBJECT: Lump-sum payment agreement under Schedule 4 of the Intellectual Disability Services Award**

I, ..... hereby certify that the extent of [insert name of eligible employee]'s, incapacity result from the following injury/injuries can be determined with a reasonable degree of confidence:

| Injury date | Injury description | Employer |
|-------------|--------------------|----------|
|             |                    |          |
|             |                    |          |
|             |                    |          |

I also certify that [insert name of eligible employee] has received advice from me about the future medical services (and, if relevant, therapeutic appliances and other forms of assistance related to his or her future health) that [insert name of eligible employee] will or is likely to require on account of the work injury or injuries set out above and any related surgery, treatment or condition.

Signature:

Qualifications:

Address/contact details:

Date:

**APPLICATIONS FILED**

| <i>Case No</i>    | <i>Description</i>  |
|-------------------|---|
| <b>06684/2000</b> | AWARD VARIATION<br>Award NOT varied. Appln adjourned sine die. (re to prescribe by award various conditions which had been the subject of administrative action.)   |
| <b>04136/2001</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2001. Oupdate ppc 14/07/2001.   |
| <b>04262/2002</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2002 (joined with 4332/2002). Oupdate ppc 14/07/2002.   |
| <b>04332/2002</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2002 (joined with 4262/2002). Oupdate ppc 14/07/2002.   |
| <b>03519/2003</b> | AWARD VARIATION<br>Award varied. Sch. 1 Salaries re SWC 2003. Oupdate ppc 14/07/2003.   |
| <b>04221/2004</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2004. Oupdate ppc 14/07/2004.   |
| <b>06738/2004</b> | AWARD REVIEW S99<br>New Award issued. Oupdate 24/03/2006. Title of Award changed FROM "Intellectual Disability Services (SA Health Commission) Award" TO "Intellectual Disability Services Award".  |
| <b>00438/2005</b> | AWARD VARIATION<br>Award varied. Renumber CI. 3.1 as 3.4, new CI. 3.1 Part-Time Employment, new CI. 3.2 Casual Employment, new CI. 3.3 Temporary Employment, CI. 6.1 Other Conditions of Employment. Oupdate 07/02/2005.  |
| <b>00439/2005</b> | AWARD VARIATION<br>Award varied. Various renumbering and Part Title changes, new CI. Passive Duty, new CI. Annual Leave, new CI. Annual Leave Loading. Oupdate 07/02/2005.  |
| <b>02293/2005</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2005. Oupdate ppc 14/07/2005.   |
| <b>00693/2006</b> | AWARD VARIATION<br>Award varied. CI. 5.1 Annual Leave, CI. 5.2 Annual Leave Loading, New CI. 5.3 Personal Leave - Injury & Sickness, New CI. 5.4 Bereavement Leave, New CI. 5.5 Parental Leave, New CI. 5.6 Personal Leave To Care For A Family Member, New CI. 6.6 Continuous Service. Oupdate 21/02/2006. |
| <b>04451/2006</b> | AWARD VARIATION<br>Award varied. Sch.1 Rates of Pay re General Application to Review Wages 2006. Oupdate ppc 14/07/2006.  |

| <i>Case No</i>    | <i>Description</i>   |
|-------------------|--|
| <b>04504/2007</b> | AWARD VARIATION<br>Award varied. Sch.1 Rates of Pay re SWC 2007. Updates ppc 14/07/2007 & 01/10/2007.  |
| <b>05968/2008</b> | AWARD VARIATION<br>Award NOT varied re Registrar consolidation for SWC 2008. Superseded by 6469/2008.  |
| <b>06469/2008</b> | AWARD VARIATION<br>Award varied. Cl. 1.3 Scope & Persons Bound; Part 2 rates of pay & Classification Structure (retitled); Cl. 2.1 Rates of Pay & Classification Structure (retitled); Sch. 1 Rates of Pay; and new Sch. 2 Work Level Definitions. Update ppc 01/04/2008 (& 01/10/2008 re SWC 2008). |
| <b>03505/2009</b> | AWARD CONDITIONS<br>re conversion of sick leave from days to hours and the arrangements for translation of Level 2 Disability Services Officers to the new Disability Services Officer structure.  |
| <b>05724/2009</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2009. Update ppc 01/10/2009.   |
| <b>03381/2010</b> | AWARD VARIATION<br>Award varied. New Sch. 3 Training Wage Arrangements. Update 29/06/2011.   |
| <b>04654/2010</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay re SWC 2010. Update ppc 01/10/2010.   |
| <b>04310/2011</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2011. Update ppc 01/10/2011.  |
| <b>05884/2011</b> | AWARD VARIATION<br>No further action. Award varied by 1299/2012.   |
| <b>01299/2012</b> | AWARD VARIATION<br>Award varied. Cl. 3.2 Casual Employment, Cl. 6.5 Passive Duty re casual loading 01/01/2012, 01/07/2012, 01/07/2013, 01/07/2014. Update 19/04/2012.  |
| <b>02759/2012</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2012. Update ppc 01/07/2012.  |
| <b>03210/2013</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2013. Update ppc 01/07/2013.  |
| <b>04276/2014</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2014. Update ppc 01/07/2014.  |
| <b>06392/2015</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2015. Update ppc 01/07/2015.  |



---

| <i>Case No</i>     | <i>Description</i>  |
|--------------------|---|
| <b>3202/2016</b>   | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2016. Oupdate ppc 01/07/2016.                          |
| <b>3332/2017</b>   | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2017. Oupdate ppc 01/07/2017.                          |
| <b>00611/2018</b>  | AWARD VARIATION<br>Award varied. New Cl. 6.9 & new Sch. 4 Additional Compensation for Certain Work Related Injuries or Illnesses. Oupdate 30/09/1987. |
| <b>4311/2018</b>   | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2018. Oupdate ppc 01/07/2018.                          |
| <b>ET-19-01422</b> | AWARD VARIATION<br>Award varied. Sch. 1 Rates of Pay, Sch. 3 Training Wage Arrangements re SWC 2019. Oupdate ppc 01/07/2019.                          |