

AW812348 [loose-leaf version]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AUSTRALIAN INDUSTRIAL REGISTRY LOOSE-LEAF CONSOLIDATION

RECREATIONAL DIVING INDUSTRY AWARD 2001

This award as to 16 December 2005 (variation [PR966801](#)) comprises pages:

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This award consolidates the Recreational Diving Industry Award 1989 [AW794756 R0064]

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00730 of 1999)

RECREATIONAL DIVING INDUSTRY AWARD 1989

(ODN C No. 00135 of 1987)

[Print H9653 [R0064]]

Various employees

Diving services

COMMISSIONER LARKIN

SYDNEY, 10 DECEMBER 2001

Award simplification.

ORDER

A. Further to the decision issued by the Commission on 30 November 2001, [Print [PR912027](#)] the above award is varied as follows:

By deleting all clauses and appendices and inserting the following:

PART 1 - APPLICATION AND OPERATION OF AWARD

1. TITLE

The title of this award is the Recreational Diving Industry Award 2001.

2. ARRANGEMENT

This award is arranged as follows:

Part 1 - Application and operation of award

1. Title
2. Arrangement
3. Date of operation and duration of award
4. Parties bound
5. Application of award
6. Supersession of previous awards
7. Savings
8. Posting of award
9. Definitions
10. Anti-discrimination

Part 2 - Award flexibility

11. Enterprise flexibility provisions
12. Index of facilitative provisions

Part 3 - Dispute resolution

13. Dispute settlement procedure

Part 4 - Employment relationship

14. Employer/employee duties
15. Employment categories
16. Termination of employment
17. Stand down of employees

Part 5 - Wages and related matters

18. Rates of pay
19. Payment of wages
20. Allowances

Part 6 - Hours of work, breaks and overtime

21. Hours of work
22. Breaks
23. Overtime

Part 7 - Types of leave

24. Annual leave
25. Personal leave
26. Parental leave
27. Jury service
28. Calculation of continuous service

Schedule A - Transitional provisions

Schedule B- Employer respondents

3. DATE OF OPERATION AND DURATION OF AWARD

This award will come into operation from the beginning of the first pay period to commence on or after 29 November 2001 and will remain in force for a period of 12 months.

4. PARTIES BOUND

This award is binding on:

4.1 the following organisations and their members:

- ?? The Maritime Union of Australia;
- ?? The Australian Institute of Marine and Power Engineers, and
- ?? The Australian Maritime Officers Union.

4.2 the employers listed in Schedule B, in respect of employment by them of all employees whether members of an organisation listed in clause 4.1 or not.

5. APPLICATION OF AWARD

This award applies to the employment of persons in, or in connection with, diving in the provision of recreational diving, and related shipboard and underwater services in all areas within the Commonwealth of Australia and all areas that fall within the territorial jurisdiction of the Commonwealth of Australia.

6. SUPERSESSSION OF PREVIOUS AWARDS

This award supersedes the *Recreational Diving Industry Award 1989* and the following roping-in awards:

- ?? *Recreational Diving Industry (Roping-In No. 1) Award 1992;*
- ?? *Recreational Diving Industry (Roping-In No. 2) Award 1992;*
- ?? *Recreational Diving Industry (Roping-In No. 3) Award 1992;*
- ?? *Recreational Diving Industry (Roping-In No. 1) Award 1993;*
- ?? *Recreational Diving Industry (Roping-In No. 1) Award 1995;*

but no right, obligation or liability accrued or incurred under such awards or variations will be affected by such supersession.

7. SAVINGS

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

8. POSTING OF AWARD

A copy of this award and all variations will be exhibited or made available by the employer at the place of work.

9. DEFINITIONS

9.1 Working time for an instructor means instruction time plus pre and post dive briefings of a maximum 30 minutes duration each.

10. ANTI-DISCRIMINATION

- 10.1** It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 10.2** Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 10.3** Nothing in this clause is taken to affect:
- 10.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
- 10.3.2** junior rates of pay, until 22 June 2000;
- 10.3.3** an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
- 10.3.4** the exemptions in s.170CK(3) and (4) of the Act.

PART 2 - AWARD FLEXIBILITY

11. ENTERPRISE FLEXIBILITY PROVISIONS

(See ss.113A and 113B of the Act)

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 11.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 11.2** For the purpose of the consultative process the employees may nominate the Union or another to represent them.
- 11.3** Where agreement is reached an application shall be made to the Commission.

12. INDEX OF FACILITATIVE PROVISIONS

- 12.1** A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise or workplace concerned.

12.2 Facilitative provisions in this award are contained in the following clauses:

| Subject matter | Clause number |
|---------------------------------------|----------------------|
| Payment of wages | 19.2 |
| Ordinary hours of work | 22.1 |
| Annual leave – method of taking leave | 24.2 |

PART 3 - DISPUTE RESOLUTION

13. DISPUTE SETTLEMENT PROCEDURE

13.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

13.1.1 The employee and their supervisor meeting and conferring on the matter; and

13.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and the employee's nominated representative, if any, and more senior levels of management.

13.2 If the matter is still not resolved a discussion shall be held between representatives of the employer and the employee's nominated representatives which may include a union.

13.3 If the matter cannot be resolved it shall be referred to the Australian Industrial Relations Commission for conciliation, and if necessary, arbitration.

13.4 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

PART 4 - EMPLOYMENT RELATIONSHIP

14. EMPLOYER/EMPLOYEE DUTIES

Employees may be required to carry out the duties of deckhands, cooks or skippers in addition to instructing and supervising diving operations, shopwork, interviewing prospective clients and undefined duties.

15. EMPLOYMENT CATEGORIES

15.1 Employees under this award will be employed in one of the following categories:

15.1.1 full-time employees; or

15.1.2 casual employees

15.2 Full-time employees

- 15.2.1** All employees except casual employees must be employed by the week.
- 15.2.2** Where employment is of less than four weeks' duration employees will be paid casual rates.

15.3 Full-time employees - boat trip

- 15.3.1** A **day trip** means a trip that takes place within a period of 24 hours, ie. the employee leaves and returns within a period of 24 hours.
- 15.3.2** A **long trip** means a trip that exceeds a period of 24 hours.
- 15.3.3** When a full-time employee is on a day trip, the employee is entitled to a minimum payment of six hours ordinary time pay.
- 15.3.4** When a full-time employee is on a long trip, the employee is entitled to a minimum payment of six hours ordinary time pay for each 24 hour period of duration of the trip.

15.4 Casual employees

- 15.4.1** Casual employment is to be terminated by four hours' notice on either side, or by the payment or forfeiture of four hours' wages as the case may be.

15.4.2 Shop work

A casual employee engaged in shop work which includes classroom instruction is entitled to a minimum payment of two hours ordinary time pay.

15.4.3 Field work

Where field work takes place within a period of 24 hours, a casual employee is entitled to a minimum payment of four hours ordinary time pay.

15.4.4 Boat trip

- 15.4.4(a)** When a casual employee is on a day trip that is in excess of six hours, the employee is entitled to a minimum payment of six hours ordinary time pay.
- 15.4.4(b)** When a casual employee is on a day trip of less than six hours, the employee is to be paid the actual hours worked.

16. TERMINATION OF EMPLOYMENT

16.1 Notice of termination by employer

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

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

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

16.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

16.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

16.1.5 The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

16.1.6 Continuous service is defined in clause 28 - Calculation of continuous service.

16.2 Notice of termination by an employee

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

16.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

16.3 Time off during notice period

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

17. STAND-DOWN OF EMPLOYEES

The employer may deduct payment for any day the employee cannot be usefully employed because of any strike or through breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

PART 5 - WAGES AND RELATED MATTERS

18. RATES OF PAY

18.1 Full-time employees

[18.1 varied by [PR966801](#) ppc 16Dec05]

A full time employee performing work within the classifications listed in the following table will be paid no less than the minimum rate adjacent to the relevant classification. Where an employee was employed prior to 29 November 2001, that employee may be eligible for a higher rate in accordance with Schedule A, Transitional Provisions, of this award.

| Classification | Minimum Rate per annum |
|-----------------------|-------------------------------|
| | \$ |
| Diving Instructor | 27847.80 |
| Dive Master | 27847.80 |

18.1.1 The above classifications have been set at 90% of the C10 fitter rate of the Metal, Engineering and Associated Industries Award [AW789529]].

[18.2 substituted by [PR966801](#) ppc 16Dec05]

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

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

18.3 Casual employees

A casual employee will be paid an hourly rate equal to 1/1976 of the annual rate plus 10% loading.

19. PAYMENT OF WAGES

19.1 Wages will be paid weekly.

19.2 Where the employer and employee agree, wages may be paid at intervals other than weekly, but will be paid at least monthly.

19.3 The employer must not keep more than two days' pay in hand.

19.4 Employees kept waiting for their wages on pay day for more than fifteen minutes after the usual time for ceasing work must be paid overtime rates after that fifteen minutes.

19.5 On termination of employment, wages due to employees must be paid to them on the day of such termination or forwarded to them by post on the next working day.

19.6 Payment of wages may be made by cash, bank cheque or electronic funds transfer.

20. ALLOWANCES

20.1 Accommodation and meals offshore

20.1.1 The employee will be reimbursed for accommodation purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision will not apply where accommodation is provided by the employer.

20.1.2 The employee will be reimbursed for all meals purchased whilst on board a vessel travelling offshore for a journey of one or more nights. This provision does not apply where the meals are provided by the employer.

20.2 Distant work on shore

20.2.1 Definition

20.2.1(a) For the purpose of this clause **distant work** means that the distances or the travelling facilities to and from places of work make it reasonably necessary that employees live and sleep at some place other than their usual place of residence at the time of commencing work.

20.2.1(b) If employees whilst employed on distant work change their usual place of residence, such new place of residence or any further change of residence (if made whilst employed on distant work) will be regarded as the employee's usual place of residence for determination of whether the work is distant work within the meaning of this clause.

20.2.2 Travel to and from distant work

- 20.2.2(a)** Employees engaged on distant work (as defined in 20.2.1(a)) and who are required to travel, with equipment, to and from work will be reimbursed for the cost of such travel unless the employer provides the means of travel.
- 20.2.2(b)** Where an employee is recalled and required to return on more than one occasion to the place of work, the employer will reimburse the employee the cost of obtaining conveyance on each occasion, provided that where the employer provides such conveyance, the obligation with respect to payment or reimbursement shall have been fulfilled.
- 20.2.2(c)** The employer will not reimburse the employee for the cost of travel and travelling time of an employee who:
- ?? leaves the employment of their own free will before the completion of the job or before being three months in such employment, whichever happens first, or
 - ?? is discharged for incompetence within one week of engagement; or
 - ?? is discharged for misconduct.

20.2.3 Rate of pay for travel to and from distant work

- 20.2.3(a)** The rate of pay for time occupied in travelling to and from distant work will be ordinary rates, except on Sundays and holidays when it will be time and one-half.

[20.2.3(b) varied by [PR966801](#) ppc 16Dec05]

- 20.2.3(b)** Employees will also be paid an amount of \$5.00 to cover the expenses, if any, of reaching home and of transporting their personal diving equipment.
- 20.2.3(c)** The maximum travelling time to be paid for is twelve hours out of every 24 hours, or when a sleeping berth is provided by the employer for all night travel, eight hours out of every 24 hours.

20.2.4 Accommodation and meals

- 20.2.4(a)** The employee will be reimbursed for accommodation purchased whilst on distant work. The provision will not apply where accommodation is provided by the employer.
- 20.2.4(b)** The employee will be reimbursed for all meals purchased whilst on distant work. This provision does not apply where the meals are provided by the employer or where the provisions of clauses 20.2.4(c) and 20.2.4 (d) apply.

[20.2.4(c) varied by [PR966801](#) ppc 16Dec05]

20.2.4(c) In special circumstances employees, by mutual agreement with the employer, may be paid an allowance of \$253.00 per week or such greater amount as may be agreed on, in return for the employees being responsible for securing their own accommodation and meals.

[20.2.4(d) varied by [PR966801](#) ppc 16Dec05]

20.2.4(d) In the case of broken parts of the week occurring at the beginning or ending of employment on a distant job, the allowance is \$36.10 per day or 1/7 of any other weekly amount agreed on.

20.3 Vehicle allowance

[20.3 varied by [PR966801](#) ppc 16Dec05]

Employees who consent to use their own vehicle in the course of their employment, for the transportation of themselves and their personal diving equipment will be paid an allowance of 45 cents per kilometre.

[20.4 varied by [PR966801](#) ppc 16Dec05]

20.4 Language Allowance

The language allowance of \$1855 per annum is payable for the required skill to instruct in a language other than English, where required by the employer.

PART 6 - HOURS OF WORK, BREAKS AND OVERTIME

21. HOURS OF WORK

21.1 The ordinary hours of work must not exceed 152 hours for each four week period of 28 days.

21.2 The ordinary hours may be worked any day of the four week period to a maximum of twelve ordinary hours on any one day.

22. BREAKS

22.1 Rest break

Each employee is entitled to a ten minute rest break during the morning or afternoon without loss of pay at a time mutually agreed between the employer and the employee.

22.2 Meal break

Each employee is entitled to an unpaid meal break at a time fixed by mutual agreement between the employer and the majority of employees concerned provided that no employee works more than five hours without a meal break.

23. OVERTIME

23.1 Overtime means any hours worked on any one day in excess of the maximum of twelve hours prescribed in clause 21.2.

23.2 Overtime will be paid at the rate of time and a half for the first two hours and double time thereafter.

PART 7 - TYPES OF LEAVE

24. ANNUAL LEAVE

24.1 Period of leave

24.1.1 A period of twenty days paid annual leave will be allowed over a four week period of 28 days to each employee after each twelve months of continuous service.

24.1.2 The twenty days paid annual leave must equal 1/12 of the rate per annum prescribed in clause 18 of this award.

24.2 Leave to be given and taken

The annual leave must be given and taken:

- ?? in one continuous period; or
- ?? if the employer and employee so agree, in two separate periods; and
- ?? within six months of falling due.

24.3 Payment for period of annual leave

An employee must, before going on leave, be paid the wages he or she would otherwise have been paid pursuant to clause 18 had the employee not been absent on leave.

24.4 Loading on annual leave

In addition, an employee will receive an annual leave loading of 17.5% of the amount prescribed in clause 24.3.

24.5 Calculating leave entitlement on termination

If an employee:

- ?? after one week's employment in his or her first qualifying twelve month period with an employer lawfully leaves the employment of the employer, or the employment is terminated by the employer through no fault of that employee; or
- ?? after twelve months continuous service with an employer, leaves his or her employment or the employment is terminated by the employer;

the employee must be paid pro rata to their period of service at the rates prescribed in clause 18.

25. PERSONAL LEAVE

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

25.1 Amount of paid personal leave

25.1.1 Paid personal leave will be available to an employee when they are absent due to:

- ?? personal illness or injury (sick leave); or
- ?? for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or
- ?? because of bereavement on the death of an immediate family or household member (bereavement leave).

25.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

25.1.2(a) Less than four weeks service - two days

After four weeks service - twelve days

25.1.2(b) Twelve days will be available per annum in the second and subsequent years of service.

25.1.3 In any year unused personal leave accrues by the lesser of:

25.1.3(a) Ten days less the amount of sick leave and carer's leave taken during the year; or

25.1.3(b) the balance of that year's unused personal leave.

25.1.4 Personal leave may accumulate to a maximum of 40 days in any one year.

25.2 Immediate family or household

25.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is sought being either:

25.2.1(a) a member of the employee's immediate family; or

25.2.1(b) a member of the employee's household.

25.2.2 The term **immediate family** includes:

25.2.2(a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

25.2.2(b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

25.3 Sick leave

- 25.3.1** An employee after four weeks service is entitled to use up to ten days of the current year's personal leave entitlement as sick leave in the first year of service and ten days in the second and subsequent years of service.
- 25.3.2** An employee is entitled to use accumulated personal leave for the purposes of sick leave where the current year's sick leave entitlement has been exhausted.
- 25.3.3** An employee must produce within 48 hours of the commencement of an absence for sick leave, satisfactory evidence of their illness or injury to their employer.
- 25.3.4** An employee who is required to be subjected to greater than atmospheric pressure and who suffers any serious illness or injury resulting in an inability to perform any work, in circumstances in which workers' or accident compensation was not payable, will be entitled to an extra ten days sick leave.
- 25.3.5** In the circumstances specified in 25.3.4 the employer may reasonably request and the employee must reasonably comply with the request, that the employee be medically examined and approved for sick leave by a doctor nominated by the employer.
- 25.3.6** The provision of a total of twenty days sick leave per year is to cover a situation of disabling illness or injury in one year. Disabling illness or injury means an illness or injury which prevents an employee from diving or being subject to greater than atmospheric pressure, but not from performing any other activity under the provisions of this award.
- 25.3.7** **Sickness whilst on annual leave**

25.3.7(a) An employee who is absent on annual leave and suffers personal illness or injury during that time will be granted paid sick leave in place of paid annual leave if the employee:

- ?? is confined to his or her place of residence or a hospital for a period of seven consecutive days or more; and
- ?? produces a certificate from a registered medical practitioner that he or she was so confined; and
- ?? makes application for replacement leave within seven days of resuming work.

25.3.7(b) Replacement of paid annual leave by paid sick leave:

- ?? will not exceed the period of paid sick leave to which the employee was entitled at the commencement of annual leave; and
- ?? will not be made with respect to fractions of a day.

25.3.7(c) Where paid sick leave has been granted in accordance with this clause, that portion of the annual leave equivalent to the paid sick leave will be replaced by the paid sick leave and the reinstated annual leave:

- ?? may be taken at another time mutually agreed to by the employer and the employee; or,
- ?? failing agreement, may be added to the employee's next period of annual leave; or,
- ?? if termination occurs before then, will be paid in accordance with clause 24.5.

25.3.7(d) Payment for replaced annual leave will be at the wage rate applicable at the time the leave is subsequently taken except that the annual leave loading in clause 24.4 is deemed to have been paid with respect to the replaced annual leave.

25.4 Bereavement leave

25.4.1 An employee is entitled to use up to two days personal leave as bereavement leave on each occasion.

25.4.2 Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to two days unpaid bereavement leave.

25.4.3 An employee must produce satisfactory evidence of the death of the person concerned.

25.5 Carer's leave

25.5.1 An employee is entitled to use up to five days personal leave each year as carer's leave.

25.5.2 An employee may take unpaid carer's leave by agreement with the employer.

25.5.3 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.

26. PARENTAL LEAVE

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

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

26.1 Definitions

- 26.1.1** For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- 26.1.2** Subject to clause 26.1.3, in this clause, **spouse** includes a de facto or former spouse.
- 26.1.3** In relation to clause 26.5, **spouse** includes a de facto spouse but does not include a former spouse.

26.2 Basic entitlement

- 26.2.1** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- 26.2.2** Subject to 26.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 26.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - 26.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

26.3 Maternity leave

- 26.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 26.3.1(a)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;
 - 26.3.1(b)** of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least four weeks.
- 26.3.2** When the employee gives notice under 26.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

- 26.3.3** An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 26.3.4** Subject to clause 26.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- 26.3.5** Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 26.3.6 Special maternity leave**
- 26.3.6(a)** Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- 26.3.6(b)** Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- 26.3.6(c)** Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- 26.3.7** Where leave is granted under clause 26.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

26.4 Paternity leave

- 26.4.1** An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:
- 26.4.1(a)** a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- 26.4.1(b)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and

26.4.1(c) a statutory declaration stating:

- 26.4.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;
- 26.4.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and
- 26.4.1(c)(iii)** that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

26.4.2 The employee will not be in breach of clause 26.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

26.5 Adoption leave

26.5.1 The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

26.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

- 26.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
- 26.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
- 26.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

26.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

26.5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

26.5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

26.5.6 An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

26.6 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

26.7 Parental leave and other entitlements

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

26.8 Transfer to a safe job

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

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

26.9 Returning to work after a period of parental leave

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

26.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 26.8, the employee will be entitled to return to the position they held immediately before such transfer.

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

26.10 Replacement employees

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

26.10.2 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.

27. JURY SERVICE

Employees, other than casual employees, who:

- ?? are called for jury service; and
- ?? request to be excused from such jury service; and
- ?? are still required to attend for jury service

will be reimbursed by the employer the difference between any remuneration they receive for attending jury service and their usual ordinary time rates of pay.

28. CALCULATION OF CONTINUOUS SERVICE

28.1 Except for the following, any absences from work are not to be taken into account and will not count as time worked in calculating the leave entitlement:

- 28.1.1** any interruption or termination of the employment by the employer which has been made with the intention of avoiding obligations under this clause;
- 28.1.2** any absence from work on account of leave (paid or unpaid) granted by the employer, including leave on jury service, or absence due to long service leave;
- 28.1.3** any absence from work on account of personal sickness or accident up to 152 hours in a twelve month period; or
- 28.1.4** any absence with reasonable cause, proof of which will be upon the employee.

Any absence which does not count as time worked in calculating the leave entitlement does not break continuity of service for the purpose of this award.

28.2 Where service is before or after the date of this award, transmitted from an employer (in this subclause called the transmittor) to another employer (in this clause called the transmittee) and an employee who at the time of such transmission was an employee of the transmittor in that service becomes an employee of the transmittee.

28.2.1 the continuity of employment of the employee shall be deemed not to have been broken by reason of such transmission; and

28.2.2 the period of employment, which the employee has had with the transmittor or any prior transmittee, shall be deemed to be of service to the employee with the transmittee.

B. This order will come into force from the beginning of the first pay period to commence on or after 29 November 2001 and will remain in force for a period of twelve months.

SCHEDULE A - TRANSITIONAL PROVISIONS

A.1 The provisions of this Schedule only apply to an employee who was employed by the employer immediately prior to 29 November 2001 (the date the award was reviewed under Item 51, Part 5, Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996*).

A.2 Where an employee's rate of pay determined in accordance with this Schedule is higher than that otherwise applying under clause 18 of this award, it will apply to the employee while that rate remains beneficial to the employee.

A.3 In accordance with the *Paid Rates Review* Decision of 20 October 1998 (Print Q7661), any future increases in salary rates in the award will not apply to the rates in this Schedule.

(a) A permanent employee shall be paid the amounts set out hereunder:

| Classification | Rates per annum |
|-------------------------------|-----------------|
| | \$ |
| Diving Instructor | |
| Years of teaching experience: | |
| 0 to 6 months | 19559.70 |
| 7 to 24 months | 22602.30 |
| 25 to 36 months | 23689.00 |
| 37 to 47 months | 24775.60 |
| Over 48 months | *26079.60 |
| Dive Master | 19559.70 |

(* includes the language allowance where applicable)

The language allowance of \$1304 per annum is payable for the required skill to instruct in a language other than English at year three of experience where required by the employer.

Employees may be required to carry out the duties of deckhands, cooks or skippers in addition to instructing and supervision of diving operations, shopwork, interviewing prospective clients and undefined duties.

(b) A casual employee shall be paid an hourly rate equal to 1/1976 of the annual rate plus 10% loading.

SCHEDULE B - EMPLOYER RESPONDENTS

A.B. Ocean Divers

Action Divers, Shop 4 / 1-5 Manning Street, Tuncurry NSW 2428
Advance Recreation Int Pty Ltd, 2-10 Adelaide Road, Victor Harbour S.A.
Adventure Connection Australia, Shop 9, PO Box 74, Palm Cove QLD 4879
Adventure Down Under Pty Ltd, 604 Mountain Highway, Bayswater VIC.
Adventureland Diving, American Beach Penneshaw, Kangaroo Island S.A.
Aqua Medium Dive, 343 Colbee Court, Phillip A.C.T.
Aqua Shack, Cnr Hawke & Nowra Streets, Huskisson N.S.W.
Aquatic Dive Services, 2 Campbell Crescent, Terrigal N.S.W.
Aquatique, 88 Worrigeer Street, Nowra N.S.W.
Argonaut Dive, 9 Tuggeranong Square, Tuggeranong A.C.T.
Associated Divers, 1292 Centre Road, Clayton VIC.
Atlantis Divers, Barenjoey Boathouse, Governor Phillip Park Palm Beach N.S.W.
Australian Diving Centre, 259 Stirling Highway, Claremont W.A.
Barraduda Dive Perth, 131 William Street, Perth W.A.
Barraduda Dive, 67 McCoy Street, Myaree W.A.
Barrie Reef Diving Services
Bermagui Dive and Boating, 8 Bunga Street, Bermagui N.S.W.
Blue Horizon Divers, 133 Abbott Street, Cairns QLD 4870
Breathing Equipment Service and Training, 3 Erin Place, Cronulla N.S.W.
Bribie Island Scuba Centre, Bribie Waterways Resort, 1467 Bribie Island Rd, Ningi QLD 4511
Bundaberg Dive Centre, 22 Quay Street, Bundaberg QLD 4670
Bundaberg Dive Centre, 48 Targo Street, Bundaberg QLD 4670
Byron Bay Dive Centre, 9 Lawson Street, Byron Bay N.S.W.
Cairns Deep Sea Divers Den
Cairns Dive Centre 135 Abbott Street, Cairns QLD 4870
Cairns Underwater Camera Centre Cnr Lake & Aplan Streets, Cairns QLD 4870
Cape Tribulation Diving Service, Cape Tribulation, Far North Queensland 4873
Capricorn Reef Diving, 189 Musgrave Street, Rockhampton QLD 4701
Capridive, Capricorn International Resort, Yeppoon QLD 4703
Charltons Scuba Education Services, 155-157 Brisbane Street, Launceston TAS.
Climax Dive, 112 Campbell Drive, Kooralbyn Valley QLD 4285
Coast Wide Diving Services, 41 Addison Street, Shell Harbour N.S.W.
Coolangatta Scuba Centre, Shop 24 Griffiths Street, Coolangatta QLD 4225
Coral Divers, Shop 4, 76 McMinn Street, Darwin N.T.
Coral Princess Cruises North Queensland Pty Limited
Darwin Diving Academy, 17 Wilmot Street, The Narrows N.T.
David Budd Watersports, 3 The Plaza Mandurah Terrace, Mandurah W.A.
Deep 6 Diving, 461 Church Street Nth Parramatta NSW 2151
Deep 6 Diving, 1067 Victoria Road, West Ryde N.S.W.
Deep Down Diver Education, 44 Thomson Street, Sale Vic.
Deep Sea Divers Den
Descend Diver Education, Shop 3, 826 David Street, Albury N.S.W.
Dive 2000, 2 Military Road, Neutral Bay N.S.W.
Dive Boatique, Shop 1 Sunshine Centre, Sunshine Beach Road, Noosa Junction QLD 4567
Dive Centre Manly, 10 Belgrave Street, Manly N.S.W.
Dive Experience, 82 Ferguson Street, Williamstown VIC.
Dive Ski & Surf Supplies, 413 Hay Street, Subiaco W.A.

Dive Under Pty Ltd, 49 Peninsula Avenue, Rye VIC.
 Dive World Richmond, Unit 3/340 Windsor Street, Richmond N.S.W.
 Diveline, 6 Young Street, Frankston VIC.
 Divequest Mullaway, 30 Mullaway Drive, Mullaway N.S.W.
 Diver Instruction Services, 420 Swanston Street, Melbourne VIC.
 Diver Instruction Services, 46 Canterbury Jetty Road, Blairgowrie VIC.
 Divers Service, 80 Grange Road, Welland S.A.
 Divers' Mecca 472 Esplanade Hervey Bay QLD 4655
 Diving Headquarters, 436 High Street, East Prahran VIC.
 Diving Ventures Scuba College, 384 South Terrace, South Fremantle W.A.
 Dolphin Scuba Diving, Unit 3, 129 Welshpool Road, Welshpool W.A.
 Down Under Aquatic
 Downs Diving Centre, 18 Bowen Street, Toowoomba QLD 4350
 Downunder Dive, 155 Sheridan Street, Cairns QLD 4870
 Downunder Dive, Lot 71 / 9 Jones Street, Cannonvale, QLD, 4802
 Esperance Diving Academy, 56 The Esplanade, Esperance W.A.
 Ex Mouth Diving Centre, Payne Street Potshot Hotel Resort, Exmouth W.A.
 Fantasy Dive Charters, P.O. Box 241, Port Douglas QLD 4871
 Fathom Diving, 174-176 Sydney Road, Fairlight N.S.W.
 Forster Dive Centre, 15 Little Street, Forster N.S.W.
 Forster Fishermans Wharf, 1 Memorial Drive, Forster N.S.W.
 Freedom Dive & Surf, 66 Bay Road, Allendale East S.A.
 Frog Dive Services Professional Development Centre 539 Willoughby Road Willoughby
 N.S.W.
 Frog Dive Services, 479 Anzac Parade, Kingsford N.S.W.
 Frog Dive Services, 7a Miller Street, Merrylands N.S.W.
 Fun Dive Centre, 255 Stanmore Road, Stanmore N.S.W.
 Geelong Dive & Outdoor Centre, 178 Moorabool Street, Geelong VIC.
 Get Wet Sports, Tangalooma Resort, Moreton Island QLD 4025
 Glenelg Scuba Diving, Patawalonga Frontage, North Glenelg S.A.
 Gold Coast Dive Centre, 20 Railway Street, Southport QLD 4215
 Great Barrier Reef Dive Inn, The Hud Shopping Centre, Porters Promenade, Mission Beach,
 QLD 4854
 H2O Sports, Hamilton Island QLD 4802
 Habu Dive, Shop 3 Marina Mirage, Port Douglas QLD 4871
 Habu Resorts, (PRO Facility), 111 Davidson Street, Port Douglas QLD 4871
 Harris Undersea Services
 Hayman Dive & Snorkel Centre, Hayman Resort, Hayman Island QLD 4801
 Illawarra Aqua Centre, 229 Windang Road, Windang N.S.W.
 In Depth Scuba Education, 580 Victoria Street, North Melbourne VIC.
 Inland Diving Academy, 2 Coventry Street, Kalgoorlie W.A.
 Interdive, 242 Burwood Highway, Upper Ferntree Gully VIC.
 Jervis Bay Dive Centre, 6/74 Owen Street, Huskisson N.S.W.
 Jervis Bay Sea Sports, 47 Owen Street, Huskisson N.S.W.
 Jetty Dive Centre, 396 High Street, Coffs Harbour N.S.W.
 Kangaroo Island Diving Safaries, PMB 219 Kingscote, Kangaroo Island S.A.
 Keppel Island Dive Centre, (PRO Facility), PO Box 108, Rockhampton QLD 4700
 Kirra Dive Centre, 257 Golden Four Drive, Kirra QLD 4225
 Mackay Adventure Divers, 153 Victoria Street, Mackay QLD 4740
 Mackay Diving
 Malua Bay Dive Shop, 118 Kuppa Avenue, Malua Bay N.S.W.

Mantis Diving Services, PO Box 833, Fortitude Valley QLD 4006
 Melbourne Diving Services, 144 Bell Street, West Heidelberg VIC.
 Mike Ball Water Sports
 Moreton Academy of Diving, 140 Braum Street, Deagon QLD 4017
 Mullaloo Diving & Fishing, Shop 14, Mullaloo Plaza, Koorana Road, Mullaloo W.A.,
 Naturaliste Dive Centre, 103 Queen Street, Busselton W.A.
 Nautilus Diving, 71A Stirling Highway, North Fremantle W.A.
 Nautilus Scuba Centre, 83 Gympie Road, Kedron QLD 4031
 Ocean Hut, 135 Princess Highway, Narooma N.S.W.
 Oceania Dive, Montipora Building, Shute Harbour Road, Airlie Beach QLD 4802
 Pace Sports, 189 Marine Terrace, Geraldton W.A.
 Palm Beach Dive Centre, 13 Palm Beach Avenue, Palm Beach QLD 4221
 Paradise Divers, 114 Carlton Road, Dandenong VIC.
 PDI/Peninsula Diving, Shop 3, 10 Main Street, Mornington VIC.
 Pearl Bay Diving and Fishing Co., 54 Macrossan Street, Port Douglas QLD 4871
 Penrith Dive Centre, 1/20 Castlereagh Street, Penrith N.S.W.
 Perth Diving Academy, 283 Wanneroo Road, Nollamara W.A.
 Pioneer Diving, 355 Clovelly Road, Clovelly N.S.W.
 Port Albert Dive Centre ITF, Tarraville Road, Port Albert VIC.
 Pro Aquatics Campbelltown, 7a/25-29 Dumaresq Street, Campbelltown N.S.W.
 Pro Aquatics Hornsby, 39 Jersey Street, Hornsby N.S.W.
 Pro-Dive Cairns, Marlin Wharf, Cairns QLD 4870
 Pro Dive Camberwell, 915 Boric Road, Camberwell VIC.
 Pro Dive Canberra, 7 Lonsdale Street, Braddon A.C.T.
 Pro Dive Central Coast, 1/96 The Entrance Road, The Entrance N.S.W.
 Pro Dive Chatswood, 166 Victoria Avenue, Chatswood N.S.W.
 Pro Dive Coogee, 27 Alfreda Street, Coogee N.S.W.
 Pro Dive Drummoyne, 227 Victoria Road, Drummoyne N.S.W.
 Pro Dive Mid City, 478 George Street, Sydney N.S.W.
 Pro Dive Milton, Cnr Milton & Barooka Roads, Milton QLD 4064
 Pro Dive Nelson Bay, D'Albora Marinas, Teramby Road, Nelson Bay N.S.W.
 Pro Dive Penrith, 97c Henry Street, Penrith N.S.W.
 Pro Dive Shellharbour, 2/17 Addison Street, Shellharbour N.S.W.
 Pro Dive Townsville, Shop 4 GBR Wonderland, Townsville QLD 4810
 Pro-Dive Whitsunday, 303 Shute Harbour Road, Airlie Beach QLD 4802
 Pro-Diving Services Cairns
 Professional Diving Services, Cnr Henry & Bentink Streets, Portland VIC.
 Queenscliff Dive Centre, 37 Learmonth Street, Queenscliff VIC.
 Quicksilver Diving Services, 12 Marina Mirage, Port Douglas QLD 4871
 Redlands Water Sports, 51 Woodlands Drive, Thornlands QLD 4164
 Reef Enterprise Diving Services, 386 Shute Harbour Road, Airlie Beach QLD 4802
 Scuba Education Academy, 11 Libra Street, North Balwyn VIC.
 Scuba Scene, 509 Portrush Road, Glenulga S.A.
 Scuba Schools International
 Scuba Shack, 114 Maitland Road, Mayfield N.S.W.
 Scuba Shack, Little Beach Marina, Victoria Parade Nelson Bay N.S.W.
 Scuba Ski & Tackle, 120 Hobart Road, Kingsmeadow TAS.
 Scuba Warehouse, Shop 1, Parramall George Street, Parramatta N.S.W.
 Scuba World Mooloolaba ITF, Wharf Marina Parkyn Parade, Mooloolaba QLD 4557
 Scubamaster, 2 Hamilton Street, Fairymeadow N.S.W.

Sea Trek, 37 Princess Highway, Tathra N.S.W.
Sea-Labs Systems
Seadive, 3 Redland Bay Road, Capalaba QLD 4157
Seaworld Drive, Surfers Paradise QLD 4217
Shiprock Dive, 6/617 Port Hacking Road, Lilli Pilli N.S.W.
Sorrento Quay Dive Shop, Shops 3-6 Hillarys Boat Harbour, Sorrento W.A.
Southcoast Diving Supplies, 84b Serpentine Road, Albany W.A.
Southern Commercial Divers, Windang Road, Windang NSW 2503
Southern Cross Divers Geelong, 92 Pakington Street, Geelong West VIC.
Southern Cross Divers, 92 Pakington Street, Geelong West VIC.
Southern Diving Centre, 1 Roy Terrace, Christies Beach S.A.
Southern Tasmanian Divers, 212 Elizabeth Street, Hobart TAS.
St. George Underwater Centre, 458 King Georges Road, Beverly Hills N.S.W.
Strzelecki Dive Services, Princes Way, Drouin VIC.
Sub Aquatic Training, 484 King Georges Road, Beverly Hills N.S.W.
Sundive Dive Centre, 15 Fletcher Street, Byron Bay N.S.W.
Sunlover Dive Services Pty Ltd
Sunreef Diving Services, 123A Brisbane Road, Mooloolaba QLD 4557
Super Elliotts Dive Centre, 200 Rundle Street, Adelaide S.A.
Surfers Paradise Divers, Berth 75, Mariners Cove, Seaworld Drive, Surfers Paradise QLD 4217
The Dive Bell, Shop 5, 141 Ingham Road, Townsville QLD 4810
The Dive Centre, 40 The Kingsway, Cronulla N.S.W.
The Dive Shop, 700-730 Hunter Street, Newcastle N.S.W.
The Scuba Centre, 62 Scenic Drive, East Wynyard TAS.
The Scuba Store, Shop 2, The Churches Centre, Belconnen A.C.T.
The Watershed, 1/17 Sholl Street, Mandurah W.A.
Townsville Skindiving Centre, 67a Railway Avenue, Railway Estate, QLD 4810
Tusa Dive Connection, P.O. Box 1276, Cairns Mail Centre, Cairns QLD 4870
Twin Towns Dive Centre, 44A Wharf Street, Tweed Heads N.S.W.
Ulladulla Divers Suppliers, PO Box 400, Ulladulla N.S.W.
Underwater Sports Diving Centre, 1198 Grand Junction Road, Hope Valley S.A.
Watersport West, 787 Canning Highway, Applecross W.A.
West Australia Scuba Centre, 5/2 Carson Road, Malaga W.A.
Western Diving Services, 610 Melbourne Road, Spotswood VIC.
Westports ITF, 14 Bridge Mall, Ballarat VIC.
Wilderness Sea N' Ski, 137 George Street, Liverpool N.S.W.
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