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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or variation of award

Tasmanian Trades and Labor Council
(T12395 of 2005)
Private Sector Awards

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER J P McALPINE

Wage Rates – State Wage Case 2006 – application to vary private sector awards – Awards rates to be increased by \$20 per week - Wage related allowances to be increased by 3.45% – Meal allowance increased to \$13.60 - State Minimum Wage determined at \$504.40 - s.35(1)(b)

ENTERTAINMENT AWARD

ORDER -

**No. 2 of 2006
(Consolidated)**

AMEND THE **ENTERTAINMENT AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Entertainment Award".

2. SCOPE

This award is established in respect of the industry of:

- (a) supplier of public amusement or entertainment;
- (b) proprietor of a public amusement or entertainment ticket selling or booking office;
- (c) teacher of dancing;
- (d) bookmaker; or
- (e) operator of a betting totalisator.

3. ARRANGEMENT

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Division A - Indoor Entertainment and Amusement	
Division B - Suppliers of Outdoor Public Amusement or Entertainment	
Division C - Supported Wage System	
Division D - Minimum Wage	

CONDITIONS FOR EMPLOYEES IN DIVISION A - INDOOR ENTERTAINMENT AND AMUSEMENT

Conditions of Employment	9
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CONDITIONS FOR EMPLOYEES IN DIVISION B - SUPPLIERS OF OUTDOOR PUBLIC AMUSEMENT OR ENTERTAINMENT

Annual Leave	10
Bereavement Leave	11
Fares	12

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Holiday Rates	13
Hours	14
Meal Periods - Bookmakers Clerks	15
Minimum Hiring Period	16
Overtime - Bookmakers Clerks	17
Parental Leave	18
Payment of Wages	19
Personal Leave	20
Postponement	21
Protection from Adverse Weather Conditions	22
Right of Entry	23
Time and Wages Records	24

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2006.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Entertainment Award No. 1 of 2005 (Consolidated) and No. 1 of 2006.

PROVIDED that no right, obligation or liability incurred or accrued under any of the abovementioned provisions shall be affected by the replacement and supersession.

6. PARTIES AND PERSONS BOUND

Unless otherwise specified, this award shall have application to and be binding upon:

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are employed in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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- (ii) the Media, Entertainment and Arts Alliance, Tasmania Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (iii) the Musicians' Union of Australia, Hobart Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'**Show Day**' shall mean the local Show Day in cities, towns or districts of the State, when that day, in the locality of the employer's premises, occurs on an employee's ordinary working day.

PROVIDED that the provisions of this definition shall not apply in a manner having the effect of enabling an employee to take more than one holiday for this purpose.

8. WAGE RATES

DIVISION A - INDOOR ENTERTAINMENT AND AMUSEMENT

- (a) Subject to the *Industrial Relations Act 1984*, the weekly wage rates for employees engaged in live theatre and concerts shall be in accordance with the following provisions:
- (i) The award of the Australian Industrial Relations Commission referred to as Theatrical Employees (Live Theatre and Concert) Award 1982.
 - (ii) Any variation of the abovementioned award whether made before or after the date of this award.
 - (iii) Any other award made by the Australian Industrial Relations Commission to supersede the Theatrical Employees (Live Theatre and Concert) Award 1982 shall for all purposes of this award be deemed to be the award referred to in paragraph (i) of this subclause.
- (b) Subject to the *Industrial Relations Act 1984*, the weekly wage rate for employees engaged to work in cinemas or drive-in theatres shall be in accordance with the following provisions:
- (i) The award of the Australian Industrial Relations Commission referred to as Theatrical and Amusement Employees Award 1947-78.

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- (ii) Any variation of the abovementioned award whether made before or after the date of this award.
- (iii) Any other award made by the Australian Industrial Relations Commission to supersede the Theatrical and Amusement Employees Award 1947-78.

**DIVISION B - SUPPLIERS OF OUTDOOR PUBLIC AMUSEMENT
OR ENTERTAINMENT**

The minimum hourly wage rate to be paid by an employer to an employee in all of the classifications named herein shall be as follows:

	Base Rate Per Hour \$	Safety Net Adjustment Per Hour \$	Hourly Wage Rate \$
(i) Gate or entrance supervisor	11.33	4.68	16.01
Night security attendant, with a minimum payment for 8 hours	10.94	4.63	15.57
The following classifications - Cashier/Receptionist Ticket seller or money collector Turnstyle attendant - collecting money Change person Programme seller Collector of motor vehicle charges	8.67	4.63	13.30
The following classifications - Ticket taker Turnstyle attendant - not collecting money Gate attendant Door keeper	8.65	4.63	13.28

PROVIDED where an employee works less than eight hours in one day, then the employee shall receive, in addition to the hourly wage rate prescribed above, a loading of 20 per cent for every hour worked.

N.B. The hourly wage rate as prescribed above shall be paid by an employer to an employee in the following business or calling:

- (1) Employees at race courses.
- (2) Employees at motordrome, stadium or roller-skating rink.
- (3) Employees at tenpin bowling establishments.

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- (4) Employees at or in football grounds.
- (5) Employees at or on cricket grounds.
- (6) Employees at agricultural show-grounds.
- (7) Employees at tennis centres.

	Base Rate Per Hour	Safety Net Adjustment Per Hour	Hourly Wage Rate
	\$	\$	\$
(ii) Employees at Racecourses			
Judge, Photo finish operator	12.54	4.63	17.17
Head clerk, Weigher	11.33	4.68	16.01
Timekeeper	10.70	4.63	15.33
Assistant photo finish operator, Assistant judge	9.52	4.63	14.15
Employee in charge of any department of one or more persons	8.79	4.63	13.42
The following classifications -	8.65	4.63	13.28
Starter/mobile start driver			
Assistant clerk			
Barrier attendant			
Jockey room attendant			
Scratching board attendant			
Mainland scratching clerk			
Track attendant			
General attendant			
Parking attendant			
Cloakroom attendant			
All other employees not hereinbefore provided for			

PROVISO: Where an employee works less than eight hours in one day, then the employee shall receive, in addition to the hourly wage rate prescribed above, a loading of 20 per cent for every hour worked.

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(iii) Employees at Motordrome, Stadium or Roller-skating Rink (Engaged by the Session)

The following classifications -	8.65	4.63	13.28
Barrier attendant			
Rink attendant			
Dressing room attendant			
Usher			
Commissioner or spruiker			
All other employees not hereinbefore provided for			

(iv) Employees at or in Football Grounds

Junior employees, i.e. Ball Boys/Girls, Score Board Attendants, Odd Jobbers, Programme Sellers

% of Gate Attendant as prescribed in paragraph (i) of Division B of this clause

Under 17 years of age	43
17 to 18 years of age	55
18 to 19 years of age	62
19 to 20 years of age	82
20 to 21 years of age	92

	Base Rate Per Hour	Safety Net Adjustment Per Hour	Hourly Wage Rate
	\$	\$	\$
Interchange stewards and Others not provided for, i.e. those employees not covered by paragraph (i) of Division B of this clause	8.65	4.63	13.28

PROVISO: Where an employee works less than eight hours in one day, then the employee shall receive, in addition to the hourly wage rates prescribed above, a loading of 20 per cent for every hour worked.

(v) Employees at Greyhound Race Meetings

	Base Rate Per Week	Safety Net Adjustment Per Week	Weekly Wage Rate
	\$	\$	\$
Track attendant, maintenance	352.80	179.00	531.80

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	Base Rate Per Hour	Safety Net Adjustment Per Hour	Hourly Wage Rate
	\$	\$	\$
Judge, Photo finish operator	12.54	4.63	17.17
Employee in charge of office, Identification steward	10.46	4.63	15.09
Assistant photo-finish operator, Time keeper, Assistant judge	9.52	4.63	14.15
Weighing steward, Starting box attendant, Parade steward	9.03	4.63	13.66
Hare driver performing maintenance duties	8.79	4.63	13.42
The following classifications - Assistant in office Track attendant Observation yard steward Hare driver Employees engaged at trials All other employees not hereinbefore provided for, other than employees engaged at trials	8.65	4.63	13.28
PROVISO: Where an employee works less than eight hours in one day, then the employee shall receive, in addition to the hourly wage rate prescribed above, a loading of 20 per cent for every hour worked.			
(vi) Employees at Agricultural Showgrounds	8.65	4.63	13.28
Parking attendant General attendant Cloakroom attendant All other employees, i.e. those employees not covered by paragraph (i) of Division B of this clause			
PROVISO: Where an employee works less than 8 hours in one day, then the employee shall receive, in addition to the hourly wage rate prescribed above, a loading of 20 per cent for every hour worked.			

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(vii) Bookmakers Clerks

Bookmakers clerks	8.91	4.63	13.54
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PROVISO: Where an employee works less than eight hours in one day, then the employee shall receive, in addition to the hourly wage rate prescribed above, a loading of 20 per cent for every hour worked.

DIVISION C - SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this division an employer may engage employees at a supported wage rate (as set out in subclause (c) of this division) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

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

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

(b) For the purposes of this division:

'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

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

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'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

(c) Supported Wage Rates

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

Assessed Capacity (subclause (d))	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

PROVIDED that the minimum amount payable shall be not less than \$61 per week.

(d) Assessment of Capacity

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

- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

- (i) All assessment instruments under the conditions of this division, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.

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- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

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

(g) Other Terms and Conditions of Employment

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

(h) Workplace Adjustment

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

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with subclause (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.

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- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

DIVISION D – MINIMUM WAGE

- (a) Minimum Wage

No employee shall be paid less than the minimum wage.

- (b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Division C - Supported Wage System is \$504.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

- (c) How the Minimum Wage Applies to Juniors

- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i)

- (d) Application of Minimum Wage to Certain Employees

Due to existing applicable award wage rates being greater than the relevant proportionate minimum wage, this clause will not apply to employees falling within the scope of the *National Training Wage (Tasmanian Private Sector) Award* and Trainees undertaking an apprenticeship.

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(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2006 State Wage Case Decision (T12395 of 2005) and all previous safety net and state wage case adjustments.

**CONDITIONS FOR EMPLOYEES IN DIVISION A - INDOOR
ENTERTAINMENT AND AMUSEMENT**

9. CONDITIONS OF EMPLOYMENT

(a) Live Theatre and Concerts

Subject to the *Industrial Relations Act 1984*, the conditions of employment for employees engaged in live theatre and concerts shall be in accordance with the following provisions:

- (i) The award of the Australian Industrial Relations Commission referred to as Theatrical Employees (Live Theatre and Concert) Award 1982.
- (ii) Any variation of the abovementioned award whether made before or after the date of this award.
- (iii) Any other award made by the Australian Industrial Relations Commission to supersede the Theatrical Employees (Live Theatre and Concert) Award 1982 shall for all purposes of this award be deemed to be the award referred to in subclause (i) hereof.

(b) Cinemas or Drive-in Theatres

Subject to the *Industrial Relations Act 1984*, the conditions of employment for employees engaged to work in cinemas or drive-in theatres shall be in accordance with the following provisions:

- (i) The award of the Australian Industrial Relations Commission referred to as Theatrical and Amusement Employees Award 1947-78.
- (ii) Any variation of the abovementioned award whether made before or after the date of this award.

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- (iii) Any other award made by the Australian Industrial Relations Commission to supersede the Theatrical and Amusement Employees Award 1947-78.

CONDITIONS FOR EMPLOYEES IN DIVISION B - SUPPLIERS OF OUTDOOR PUBLIC AMUSEMENT OR ENTERTAINMENT

10. ANNUAL LEAVE

- (a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee employed on a weekly basis after 12 months' continuous service (less the period of annual leave).

- (b) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual or part-time employees, shall receive a loading of 17.5% of ordinary time earnings. The loading herein prescribed shall not apply to proportionate leave on termination of service.

- (c) Proportionate Leave on Termination of Service

If after more than three months and not less than 12 months' continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment, or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid the rate of wage as follows:

13¹/₃ hours for each completed month of continuous service.

11. BEREAVEMENT LEAVE

- (a) Paid Leave Entitlement

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

PROVIDED that no payment shall be made in respect of an employee's rostered days off.

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Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer.

PROVIDED FURTHER that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

(b) Unpaid Bereavement Leave

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

(c) Casual Employees

- (i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.
- (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees are not entitled to any payment for the period of non-attendance.
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

12. FARES

All fares actually incurred in proceedings from the town or city where the employee is engaged to the place where the event is held or other place of employment and return shall be paid by the employer.

This clause shall not apply to employees at football matches.

13. HOLIDAY RATES

For meetings or fixtures held on the following days, the rates of pay prescribed in this Division shall be increased by 25 per centum - New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

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14. HOURS

(a) Bookmaker's Clerks

For clerks employed on a weekly basis the ordinary hours per week shall be an average of 38 spread over four weekly periods.

(b) Employees at Agricultural Showgrounds

All employees shall be paid overtime at the rate of time and a half.

Relief shall be provided for meals between the hours of 11.30 am and 1.30 pm, and 4.30 pm and 6.30 pm.

15. MEAL PERIODS - BOOKMAKERS CLERKS

An employee shall not be required to work for more than five hours without a break for a meal of at least 30 minutes.

16. MINIMUM HIRING PERIOD

No employee shall be employed for less than four hours for work performed on any given day and/or evening.

Where an employee works less than four hours, then that employee is entitled to receive a minimum payment as for four hours worked.

17. OVERTIME - BOOKMAKERS CLERKS

For all time of duty in excess of the ordinary hours for weekly employees payment shall be made at the rate of time and a half.

18. PARENTAL LEAVE

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.

(a) Definitions

For the purposes of this clause:

- (i) **'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

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child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.

- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
 - (1) any period of leave taken in accordance with this clause;
 - (2) any period of part-time employment worked in accordance with this clause; or
 - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

(b) Entitlement

- (i) 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 mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c) (vi), 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:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

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(iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

(i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

- (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
- (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.

(ii) Where the employee gives notice under (d) (i) 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.

(iii) 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 or other compelling circumstances.

(iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

(v) 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.

(vi) Special Maternity Leave

(1) 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.

(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.

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- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal 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 personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

- (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.
- (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.

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that 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
 - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
 - (3) a statutory declaration stating:
 - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.

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- (4) The employee will not be in breach of this subclause 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.

(e) Adoption leave

- (i) 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.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
 - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a 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.
- (v) An employee will not be in breach of this subclause 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 an adoptive parent or other compelling circumstances.
- (vi) 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.

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(f) 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.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(iii) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with this subclause, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.

(B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

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(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (C) upon the classification applying to the work to be performed; and
 - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

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(viii) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (vi).

(ix) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(x) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (4) requiring consultation with, consent of or monitoring by a union;

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.

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(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause

(i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.

(iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

(j) Redundancy

(i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

(ii) 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.

(k) Right To Request Variation To Parental Leave Provision

(i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

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- (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- (ii) 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.

(l) Communication During Parental Leave

- (i) 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:
 - (1) 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
 - (2) 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.
- (ii) 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.
- (iii) 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 (l)(i)(1).

19. PAYMENT OF WAGES

All employees shall, at the expiration of their duties, be paid at the place of employment all moneys due to them hereunder unless otherwise mutually agreed.

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20. PERSONAL LEAVE

The provisions of this clause apply to an employee, other than one engaged as a casual employee. The entitlements of casual employees are set out in subclause (i) – Casual Employees – Caring Responsibilities.

(a) Definitions

The term '**immediate family**' includes:

- (i) 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
- (ii) 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.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) An employee, engaged by the week, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay.
- (iii) The employee shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of two weeks of ordinary working time;
- (iv) For the purpose of administering paragraph (iii) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

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- (v) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (iii) of this subclause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.
- (vi) An employer shall not be required to make any payment in respect of accumulated personal leave credits to an employee who is discharged or leaves his/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

(c) Personal Leave for Personal Injury or Sickness

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

(d) Personal Leave to Care for an Immediate Family or Household Member

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

Leave may be taken for part of a single day.

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

(e) Employee Must Give Notice

- (i) The shall, within 48 hours of the commencement of such absence, inform the employer of his/her inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence.

(f) Evidence Supporting Claim

- (i) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission, that he/she was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed.

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

(g) Personal Leave and Workers' Compensation

The employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation.

(h) Unpaid Personal Leave

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

(i) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f), casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

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

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

21. POSTPONEMENT

(a) Where an employee has been notified two and a half hours prior to the employee's designated starting time, that the day and/or evening event has been cancelled or postponed to another day or evening, then the employee shall not be entitled to any remuneration for that day and/or evening event that has been cancelled or postponed.

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- (b) Where an employee is not notified in accordance with subclause (a) of this clause then the employee will be entitled to receive a minimum payment as for four hours worked.
- (c) However, if a postponement takes place on the day and/or evening of the event and the employee has worked longer than the four hour period before postponement takes place, then the employee shall receive payment equivalent to the number of hours worked.

22. PROTECTION FROM ADVERSE WEATHER CONDITIONS

Provision shall be made for all employees to be protected from adverse weather conditions wherever possible and convenient, and waterproof coverings shall be supplied for use by employees when they are required by the necessities of their work to be exposed to rain.

23. RIGHT OF ENTRY

Right of entry shall be in accordance with Section 77 of the *Industrial Relations Act 1984*.

24. TIME AND WAGES RECORDS

The employer shall keep records which contain the following information:

- (a) the name of every person employed by him/her;
- (b) the age of each such person who has not attained the age of 21 years;
- (c) the class of work that each such person performs;
- (d) the remuneration paid to such person;
- (e) the number of hours work done by each such person including the starting and finishing time;
- (f) the annual leave and sick leave credited and granted to each such person;
- (g) any other matter of which a record is required to be kept by this award.

Tim Abey
COMMISSIONER

16 November 2006