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**TASMANIAN INDUSTRIAL COMMISSION**

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

**Health Services Union of Australia, Tasmania No. 1 Branch**  
(T9527 of 2001)  
**DENTISTS AWARD**  
**HOSPITALS AWARD**  
**MEDICAL DIAGNOSTIC SERVICES (PRIVATE SECTOR) AWARD**  
**MEDICAL PRACTITIONERS (PRIVATE SECTOR) AWARD**  
**NURSING HOMES AWARD**

**Tasmanian Trades and Labor Council**  
(T9605 of 2001)  
Private Sector Awards

Award variation - bereavement leave - application approved - operative date ffpp 27 July 2001

Wage Rates - State Wage Case July 2001 - application to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002001 - Safety Net Review 2001 - Wages - Allowances - Memorandum of Understanding - Approved

**NURSING HOMES AWARD**

**ORDER BY CONSENT -**

**No. 2 of 2001**  
**(Consolidated)**

CLAUSE 16 - COMPASSIONATE LEAVE IS DELETED; A NEW CLAUSE 11 - BEREAVEMENT LEAVE IS INSERTED; NEW CLAUSES ARE SUBSTITUTED FOR CLAUSE 8 - WAGE RATES AND CLAUSE 20 - FOUL AND NAUSEOUS LINEN; CLAUSES ARE RENUMBERED; AND THE AWARD IS CONSOLIDATED

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### **1. TITLE**

This award shall be known as the "Nursing Homes Award".

### **2. SCOPE**

This award is established in respect of the industry of Nursing Homes licensed as such under the *Hospitals Act 1918*.

### **3. ARRANGEMENT**

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#### **4. DATE OF OPERATION**

This award shall come into operation from the first full pay period commencing on or after 27 July 2001, with the exception of Clause 8 - Wage Rates and Clause 20 - Foul and Nauseous Linen, which shall come into operation from the first full pay period commencing on or after 1 August 2001.

#### **5. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes the Nursing Homes Award No. 1 of 2000 (Consolidated), No. 2 of 2000, No. 3 of 2000 and No. 1 of 2001.

**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 engaged in the industry specified in Clause 2 - Scope;

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- (c) the following organisation of employees in respect of whom award interest has been determined:

the Health Services Union of Australia, Tasmania No. 1 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**

### (a) CLASSIFICATION DEFINITIONS

#### **'Administrative Employee'**

#### **Adult Entry Level - (Wage relativity to Services Employee Level 5 = 82.5%)**

'Adult Entry Level' shall mean the entry point for adult employees (21 years and over) with less than 1976 hours (or two calendar years whichever comes first) clerical experience either as a junior or adult, and on completion of that clerical experience (whether with one or more employers in any industry) such adult employee shall be advanced to a graded position dependent on skills held and position requirements.

#### **Level 1a - (Wage relativity to Services Employee Level 5 = 86%)**

An employee at this level shall be a Level 1b Administrative Employee with less than 1976 hours (or two calendar years whichever comes first) experience at this level.

#### **Level 1b - (Wage relativity to Services Employee Level 5 = 88.5%)**

An employee at this level may be engaged on tasks requiring direct supervision.

Performs routine tasks and/or operates basic equipment within guidelines established by the employer, requiring previous training or experience.

The employee would exercise little or no discretion.

Indicative tasks that may be performed at this level include:

Reception duties, filing, typing, mail.

#### **Level 2a - (Wage relativity to Services Employee Level 5 = 90%)**

An employee at this level shall be a Level 2b Administrative Employee with less than 1976 hours (or two calendar years whichever comes first) experience at this level.

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**Level 2b - (Wage relativity to Services Employee Level 5 = 92%)**

An employee at this level may be engaged on tasks requiring direct supervision.

Performs tasks using a more extensive range of skills and knowledge at a level higher than required at Level 1b Administrative Employee.

The employee may be responsible and accountable for their own work which is performed within routines and guidelines established by the employer.

The employee may exercise some discretion in relation to their own work.

Indicative tasks that may be performed at this level include in addition to those of Level 1b Administrative Employee:

Word processing, data input and retrieval.

**Level 3a - (Wage relativity to Services Employee Level 5 = 95%)**

An employee at this level shall be a Level 3b Administrative Employee with less than 1976 hours (or two calendar years whichever comes first) experience at this level.

**Level 3b - (Wage relativity to Services Employee Level 5 = 97%)**

An employee at this level may be engaged on tasks requiring general supervision.

Performs tasks using a more extensive range of skills and knowledge at a level higher than required at Level 2b Administrative Employee.

The employee would be responsible and accountable for their own work which is performed within guidelines established by the employer.

The employee would exercise some discretion in relation to their work.

An employee at this level may be in charge of up to five lower level employees.

Indicative tasks that may be performed at this level include in addition to those of Level 2b Administrative Employee:

Accounts, basic payroll duties.

**Level 4 - (Wage relativity to Services Employee Level 5 = 100%)**

An employee at this level may be engaged on tasks requiring general supervision.

Performs tasks using a more extensive range of skills and knowledge at a level higher than required for Level 3b Administrative Employee.

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The employee would be responsible and accountable for their own work and exercise discretion and initiative in the organisation of work within limits prescribed by the employer.

An employee at this level may be in charge of more than five lower level employees and be able to provide guidance by means of personal instruction and demonstration.

**Level 5 - (Wage relativity to Services Employee Level 5 = 105%)**

An employee at this level may be engaged on tasks requiring limited supervision.

Performs tasks using a more extensive range of skills and knowledge at a level higher than required for Level 4 Administrative Employee.

The employee would be responsible and accountable for their own work and have responsibility for the work of others.

The employee would exercise initiative, discretion and judgement in the performance of their work.

**Level 6 - (Wage relativity to Services Employee Level 5 = 110%)**

An employee at this level may be engaged on tasks requiring minimum supervision.

Performs tasks using a more extensive range of skills and knowledge at a level higher than required for Level 5 Administrative Employee.

The employee would be responsible and accountable for their own work and be responsible and accountable for the work of others.

The employee may be in charge of a section or department and would exercise initiative, discretion and judgement.

**Level 7 - (Wage relativity to Services Employee Level 5 = 120%)**

An employee at this level may be engaged in the performance of clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required for Level 6 Administrative Employee.

The employee would be responsible and accountable for their own work and be responsible and accountable for a section or department.

The employee would exercise initiative, discretion and judgement in the performance of their duties.

Supervision would be by means of reporting to more senior employees as required.

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### **'Extended Care Assistant'**

#### **Level 1 - (Wage relativity to Services Employee Level 5 = 78%)**

**'Trainee Extended Care Assistant'** means an employee in their first 494 hours of employment in this position and is undertaking induction training.

The employee will assist in providing direct care to residents in accordance with guidelines predetermined by the employer and shall be subject to direct supervision.

Indicative tasks that may be performed at this level include:

- Provide quality care to residents;
- Follow residents care plan;
- Observations of residents needs;
- Maintain relevant documentation.

Entry point:

- New employee.

#### **Level 2 - (Wage relativity to Services Employee Level 5 = 85.5%)**

**'Extended Care Assistant'** means a Level 1 Extended Care Assistant employee who has completed the 494 hours induction training.

An employee at this level shall continue to receive in-house training while assisting in providing care to residents in accordance with guidelines predetermined by the employer and shall be subject to direct supervision.

An employee shall remain at this level until 1976 hours work (or two calendar years whichever comes first including 494 hours induction training) has been completed.

Entry point:

- Trainee Extended Care Assistant;
- Extended Care Assistant returning after an absence of more than five years.

#### **Level 3 - (Wage relativity to Services Employee Level 5 = 88.5%)**

**'Extended Care Assistant'** means an employee that provides direct care to residents in accordance with guidelines predetermined by the employer and shall be subject to general supervision.

Indicative tasks that may be performed at this level include:

- Provide quality care to residents;
- Follow residents care plan;
- Observations of residents needs;
- Maintain relevant documentation.

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Entry Point:

Extended Care Assistant Level 2 after 1482 hours at that level, or  
Extended Care Assistant Level 2 after two calendar years at that level, whichever comes first, or  
Experience and/or training acceptable to the employer.

**Level 4 - (Wage relativity to Services Employee Level 5 = 91%)**

**'Senior Extended Care Assistant'** means an employee that provides direct care to residents in accordance with routines established by the employer, shall be subject to general supervision and shall use initiative and judgement.

Indicative tasks that may be performed at this level include:

Diversional therapy;  
Supervision of Hostels.

**Level 5 - (Wage relativity to Services Employee Level 5 = 94%)**

**'Supervisor'** means an employee that provides direct care to residents in accordance with routines established by the employer, shall be subject to limited supervision and shall use a significant degree of discretion.

An employee at this level may be in charge of employees within their section or department.

An employee at this level shall have completed a relevant training course or have relevant experience acceptable to the employer.

**'Services Employee'**

**Level 1 - (Wage relativity to Services Employee Level 5 = 78.6%)**

An employee at this level shall be a new employee undergoing training for the first 1976 hours (or two calendar years whichever comes first) of employment.

Work performed shall be under direct supervision and of a routine nature within procedures established by the employer.

**Level 2 - (Wage relativity to Services Employee Level 5 = 82%)**

An employee at this level may be engaged on tasks requiring direct supervision.

Performs routine tasks and/or operates basic equipment requiring previous training or experience and little or no discretion on the part of the employee.

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**Level 3 - (Wage relativity to Services Employee Level 5 = 87.4%)**

An employee at this level may be engaged on tasks requiring general supervision.

Performs tasks and/or operates plant and equipment requiring skills beyond Level 2 Services Employee and which require the use of some discretion on the part of the employee.

An employee at this level may be in charge of up to six lower level employees.

**Level 4 - (Wage relativity to Services Employee Level 5 = 92.1%)**

An employee at this level may be engaged on tasks requiring general supervision.

Performs tasks and/or operates plant, equipment and vehicles requiring skills beyond Level 3 Services Employee and which may require a significant degree of discretion on the part of the employee.

May provide routine assistance to trades employees requiring a limited level of trade knowledge and skill.

An employee at this level may be in charge of up to 12 lower level employees and be responsible for the assignment and quality of their work.

**Level 5 - (Wage relativity to Services Employee Level 5 = 100%)**

An employee at this level may be engaged on tasks requiring general supervision.

Performs tasks and/or operates plant, equipment and vehicles requiring trade qualifications.

Performs tasks and/or operates plant, equipment and vehicles requiring a level of skills and knowledge acceptable to the employer.

An employee at this level may be in charge of up to 20 lower level employees engaged on a variety of non-trades tasks.

**Level 6 - (Wage relativity to Services Employee Level 5 = 105%)**

An employee at this level may be engaged on tasks requiring limited supervision.

Performs trade work requiring a high level of trade skill utilising initiative and judgement above that required at Level 5 Services Employee.

An employee at this level may be in charge of up to 20 lower level employees engaged on a variety of non-trades tasks and be responsible for the assignment and quality of their work.

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**Level 7 - (Wage relativity to Services Employee Level 5 = 110%)**

An employee at this level may be engaged on tasks requiring limited supervision.

Performs trade work requiring a high level of trade skill employing an independent approach and a high degree of initiative.

These tasks may encompass the provision of trade and equivalent level guidance to other employees.

An employee at this level may be in charge of more than 20 lower level employees engaged in trades tasks and be responsible for the assignment and quality of their work.

**Level 8 - (Wage relativity to Services Employee Level 5 = 115%)**

An employee at this level may be engaged on tasks using a more extensive range of skills and knowledge at a level higher than required for Level 7 Services Employee.

The employee would be responsible and accountable for their own work and be responsible and accountable for a section or department.

The employee would exercise initiative, discretion and judgement in the performance of their duties.

Supervision would be by means of reporting to more senior employees as required.

(b) GENERAL DEFINITIONS

**'Casual employee'** means a person who either:

- (i) relieves a full-time or part-time employee; or
- (ii) is engaged temporarily for specific duties for a period not exceeding eight weeks.

**'Executive staff'** means an employee appointed to the classification of Administrative Employee Level 7.

**'Full-time employee'** means a person engaged to work for the full ordinary hours prescribed in Clause 24 - Hours.

**'Non-rotating roster'** means a roster that does not fulfil all the minimum requirements for a rotating roster in accordance with the definition of rotating roster contained in this clause.

**'Part-time employee'** means a person, other than a full-time employee or casual employee engaged to work regularly in each pay period for less hours than an equivalently classified full-time employee.

**'Projected roster'** means an employee's normal roster for the period of leave.

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**'Relevant award rate'** means the rate specified for the appropriate classification in Clause 8 - Wage Rates, excluding all allowances, loadings etc.

**'Roster'** means a work pattern designed for a specific work area for all or any work performed outside the span or ordinary hours contained in Clause 24 - Hours, excluding work performed outside the span of hours and paid in accordance with Clause 30 - Overtime.

**'Rostered employee'** means an employee required to work in accordance with a roster.

**'Rotating roster'** means a roster that requires an employee to regularly rotate between day work, afternoon work and night work or any two combinations of them, subject to the following requirements:

- (i) an employee shall not be required to work night work for more than four weeks; and
- (ii) an employee shall not be required to work more than two-thirds of their working time on night work; and
- (iii) the daily hours of afternoon or night work allocated to each employee at any one time shall continue for at least five successive afternoons or nights.

For the purpose of this definition, day work is work performed between the hours of 6.00am and 7.00pm, afternoon work is work that concludes between the hours of 7.00pm and midnight, and night work is work that commences between the hours of 4.00pm and 6.00am.

**'Show Day'** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer.

**'Union'** means a registered organisation of employees listed in Clause 6 - Parties and Persons Bound.

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## **8. WAGE RATES**

### SECTION A - WAGES - ADULTS

Adult employees shall be paid in accordance with the following structure which shall be read in conjunction with the classification definitions contained in Clause 7 - Definitions.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Total Weekly Wage \$
<b>Administrative Employee</b>				
Adult Entry Level	82.5	375.10	88.00	463.10
Level 1a	86	391.00	88.00	479.00
Level 1b	88.5	402.40	88.00	490.40
Level 2a	90	409.20	88.00	497.20
Level 2b	92	418.30	90.00	508.30
Level 3a	95	432.00	90.00	522.00
Level 3b	97	441.10	90.00	531.10
Level 4	100	454.70	90.00	544.70
Level 5	105	477.40	88.00	565.40
Level 6	110	500.20	88.00	588.20
Level 7	120	545.60	88.00	633.60
<b>Extended Care Assistant</b>				
Level 1	78	354.70	88.00	442.70
Level 2	85.5	388.80	88.00	476.80
Level 3	85.5	402.40	88.00	490.40
Level 4	91	413.80	88.00	501.80
Level 5	94	427.40	90.00	517.40
<b>Services Employee</b>				
Level 1	78.6	357.40	88.00	445.40
Level 2	82	372.80	88.00	460.80
Level 3	87.4	397.40	88.00	485.40
Level 4	92.1	418.80	90.00	508.80
Level 5	100	454.70	90.00	544.70
Level 6	105	477.40	88.00	565.40
Level 7	110	500.20	88.00	588.20
Level 8	115	522.90	88.00	610.90

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#### SECTION B - WAGES - JUNIORS

Junior employees shall be paid the wage rate assigned to the following age classification:

	% of Wage Rate Adult Entry Level
Administrative Employee	
Under 17 years of age	53
17 to 18 years of age	61
18 to 19 years of age	71
19 to 20 years of age	81
20 to 21 years of age	90

	% of Wage Rate for Extended Care Assistant Level 1
Extended Care Assistant and Services Employee	
Under 17 years of age	52
17 to 18 years of age	61
18 to 19 years of age	72
19 to 20 years of age	83
20 to 21 years of age	91

#### SECTION C - WAGES - RELEVANT MINIMUM RATE

It is a requirement of the State Wage Case Decision of 13 February, 1992, T3584 of 1991, that where a new paid rates award is made, the award shall specify the classification prescribed in the relevant minimum rates award on which the actual rates prescribed for the key classification in the paid rates award is calculated.

The following is set down in accordance with that requirement:

Minimum Rates Award - Metal and Engineering Industry Award  
Classification - Wage Group Level 7

Paid Rates Award - Nursing Homes Award  
Classification - Services Employee Level 5

#### SECTION D - SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this section an employer may engage employees at a supported wage rate (as set out in subclause (c) of this section) 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.

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**PROVIDED** that this section 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 section 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 section:

**'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.

**'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 section 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:

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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 \$51 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 section, 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.
- (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.

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(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 section 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 section 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 section 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 subclauses (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$51 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.
- (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.

## **9. ACCOMMODATION AND CONVENIENCES**

- (a) An employee required to sleep at the employers workplace shall be provided with comfortable and healthy accommodation.

In addition, such employees shall be provided linen, cutlery, crockery and blankets free of cost.

- (b) Dressing rooms, luncheon rooms and conveniences shall be provided for all employees.

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**10. ANNUAL LEAVE**

(a) Period of Leave

(i) Full-Time Employees

Full-time employees shall be allowed the following annual leave after 12 months continuous service (less the period of annual leave):

Administrative Employees - 150 hours,  
All other employees - 152 hours.

Such leave to be allowed annually and to be taken in a period of 28 consecutive days.

(ii) Part-Time Employees

Part-time employees (excluding employees who attract the 20 per cent part-time loading) shall be entitled to annual leave based on the number of ordinary hours worked in the leave year.

The leave entitlement shall be calculated on a pro-rata basis as follows:

$$\frac{\text{Part-time hours worked p.a. (including any period of annual leave)}}{\text{Full-time hours p.a.}} \times \frac{\text{Full-time leave entitlement}}{1}$$

(b) Additional Leave

(i) Employees on Roster

An employee required to work in accordance with a roster shall, in addition to the annual leave prescribed in subclause (a), be allowed 38 hours leave, to be taken in a period of seven consecutive days including non-working days.

**PROVIDED** that to receive such additional leave the employee shall be rostered to work on not less than 10 Saturdays and 10 Sundays during any one leave year.

Where an employee with 12 months continuous service is engaged for part of the 12 monthly period on a roster, he/she shall be entitled to have the period of annual leave prescribed in subclause (a) increased by 7.6 hours for each two months he/she is continuously engaged on such roster.

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(ii) Executive Staff

The annual leave entitlement for executive staff shall be increased by 38 hours where such staff are required in the normal course of their duties to attend meetings of the controlling body's committees or sub-committees outside their normal working hours.

(c) Holidays with Pay

(i) Subject to this subclause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 23 - Holidays with Pay and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to the period of annual leave, holiday leave equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

(ii) Notwithstanding the foregoing provisions, a full-time employee required to work in accordance with a roster shall receive in addition to his/her period of annual leave, holiday leave equivalent to one day for each holiday mentioned in Clause 23 - Holidays with Pay, whether or not such holiday is observed on a day which, for that employee would have been a rostered day off.

**PROVIDED** that this shall not apply to a holiday which is observed on a Saturday or on a Sunday.

**PROVIDED FURTHER** that this shall not apply to a holiday for which, by agreement between the employer and employee, an employee has been paid the appropriate holiday rate of pay in accordance with Clause 23 - Holidays with Pay.

(iii) Notwithstanding the foregoing provisions, a part-time employee (excluding an employee who attracts the 20 per cent part-time loading) who works in accordance with a roster shall receive in addition to his/her period of annual leave, holiday leave equivalent to one day for each holiday mentioned in Clause 23 - Holidays with Pay, upon which he/she is rostered to work.

**PROVIDED** that this shall not apply to a holiday which is observed on a Saturday or on a Sunday.

**PROVIDED FURTHER** that this shall not apply to a holiday for which, by agreement between the employer and employee, an employee has been paid the appropriate holiday rate of pay in accordance with Clause 23 - Holidays with Pay.

(d) Broken Leave

Leave allowed under the provisions of this clause shall be given and taken in not more than two separate periods unless the employer and the employee otherwise agree.

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(e) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee.

(f) Payment in Lieu Prohibited

Except as provided in subclause (h) payment shall not be made or accepted in lieu of annual leave.

(g) Payment for Period of Leave

- (i) An employee, before going on annual leave or additional leave provided for in subclause (b) of this clause shall be paid the amount of wages he/she would have received in respect of the ordinary time which he/she would have worked had he/she not been on leave during the relevant period.
- (ii) In addition to the entitlement prescribed in paragraph (i) of this subclause an employee shall be paid the relevant award rate plus a loading of 15 per cent for any holiday leave due in accordance with paragraphs (ii) and (iii) of subclause (c) of this clause.
- (iii) Payment shall be made not later than 12 noon on the last day of work prior to going on leave.
- (iv) Payment calculated in accordance with the provisions of this clause shall be made for the full weeks of leave taken at the time, unless otherwise specified by the employee.

(h) Proportionate Leave on Ending Service

If after one month of continuous service in respect of weekly employees in any qualifying 12 monthly period, an employee lawfully leaves the employment or the employment is terminated by the employer through no fault of the employee, the employee shall be paid at his/her ordinary rate of wage as follows:

(i) Full-Time Employees

12.67 hours for each completed month of continuous service.

(ii) Rostered Employees

15.83 hours for each completed month of continuous service in addition to such entitlements established under the provisions of subclause (b) hereof.

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(iii) Part-Time Employees

Rostered employees - 9.6 per cent of the normal hours worked in each completed month of continuous service in addition to such entitlements established under the provisions of subclause (b) hereof.

(iv) Other Employees

7.7 per cent of the normal hours worked in each completed month of continuous service.

(i) Annual Leave Allowance

During a period of annual leave (excluding leave in accordance with subclause (c) hereof) an employee shall be paid an allowance by way of additional salary calculated on the wages prescribed for the relevant classification in Clause 8 - Wage Rates as follows:

- (i) 17 ½ per cent of his/her classification rate immediately prior to going on annual leave plus, where applicable, any all purpose payment payable to the employee concerned; or
- (ii) Notwithstanding the provisions of (i) hereof in the case of an employee required to work a roster, he/she shall, while on annual leave, receive the wages equivalent to that which he/she would have received in accordance with his/her projected roster.

**PROVIDED** that if an allowance of 17 ½ per cent in addition to the relevant award rate provides a greater monetary amount than the projected roster then the employee shall be entitled to the provisions of paragraph (i) above and not the projected roster.

**PROVIDED FURTHER** that this clause shall not apply to proportionate annual leave accrued by an employee in the leave year of the year of termination of service where such employee voluntarily resigns or whose services are terminated for disciplinary or other good reason.

(j) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident up to and including 91 days.

**PROVIDED** that any absence on account of personal sickness or accident in excess of 91 days in any 12 monthly period shall not count towards calculation of continuous service.

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(k) Employer Instigated Cancellation of Leave

- (i) If, as a consequence of an employer instigated cancellation of approved annual leave (whether agreed or otherwise by the employee, and irrespective of when such cancellation notification is given) an employee incurs a monetary loss directly associated with pre-established annual leave holiday arrangements, and such loss is deemed to be unrecoverable, the employee shall be entitled to recover such otherwise unrecoverable costs from the employer.

**PROVIDED** that such claims must be verified by the production of receipts or other form of documentation indicating the prior expenditure incurred associated with pre-holiday arrangements. This information is to be accompanied by written notification, from the person or organisation with whom or which the payment was made, stating the amount which is not recoverable.

**PROVIDED FURTHER** that the employer shall only be liable to pay that portion of the payment declared unrecoverable, which is not subject to an insurance claim or payment.

- (ii) An employee who, during a period of annual leave, responds to an employer instigated request to return to work during such a period of annual leave shall be entitled to redeem from the employer any travel and other associated costs incurred in returning to work and the subsequent resumption of annual leave. Such costs are deemed to be those in excess of costs normally incurred by the employee in travelling daily to and from work.

The reimbursement of costs associated with the resumption of annual leave would only apply when the period of leave was deemed to be continuous, save only for the interruption occasioned by the return to work.

Claims for reimbursement of travel and other associated costs must be accompanied by receipts and any other form of documentation which would be appropriate to the circumstances of the claim.

- (iii) An employee, on returning to work in response to an employer instigated request, shall be recredited with one day's annual leave for each day or part thereof the employee is deemed to be at work. The employee shall be entitled to observe such additional recredited day or days in addition to that unused portion of approved annual leave (which the employee would have observed but for the interruption occasioned by his return to work) immediately upon the expiration of the period of duty for which the employer recalled the employee.

**PROVIDED** that an employee may elect to take the balance of unused leave and recredited days at a later date.

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(l) Single Day Annual Leave

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record these short term annual leave arrangements in the time and wages book, as prescribed in Clause 44 - Wage and Time Record of this award.

## **11. BEREAVEMENT LEAVE**

An employee shall on the death of a member of the employee's immediate family, or a member of the employee's household 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.

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

**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.

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

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- (a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (b) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

## **12. BREAKAGES**

Except in the case of proved carelessness, an employee shall not be required to pay for any breakages occurring in the ordinary course of his/her specified duties.

## **13. CALL BACK**

- (a) Except where otherwise specifically provided an employee recalled to work after leaving his/her employer's workplace (whether notified before or after leaving such workplace) shall be paid at the overtime rate in accordance with Clause 30 - Overtime.
- (b) Where an employee is recalled to work in accordance with subclause (a) hereof and the payment at overtime rates in accordance with Clause 30 - Overtime does not equal or exceed four hours pay, then the employee shall be paid four hours pay.
- (c) Where an employee is recalled to work a second time, and such recall is within the hours for which payment is already due under subclause (b) hereof, the time worked in the first and second recall shall be combined for the purpose of calculating payment and shall be calculated in accordance with subclause (b) hereof.
- (d) Where an employee is recalled to work a second time, and such recall is outside the hours for which payment is already due under subclause (b) hereof, the employee shall be paid in accordance with Clause 30 - Overtime.

**PROVIDED** that where such payment does not equal or exceed three hours pay, then the employee shall be paid three hours pay.

- (e) Where an employee is recalled to work a third or subsequent time, payment shall be made at the overtime rate in accordance with Clause 30 - Overtime.

**PROVIDED** that where such payment does not equal or exceed three hours pay, then the employee shall be paid three hours pay.

- (f) Time reasonably spent in getting to and from work shall be regarded as time worked.

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- (g) An employee who is recalled to work within two hours of his/her normal starting time shall be paid at the overtime rate in accordance with Clause 30 - Overtime.

**PROVIDED** that where such payment does not equal or exceed four hours pay, then the employee shall be paid four hours pay.

#### **14. CALL - REMOTE**

- (a) An employee who is to remain on 'remote call' (that is on call for duty and allowed to leave the precincts of the establishment) shall be paid 80.55 cents for each hour he/she is required to be so available, with a minimum payment of \$8.30 for each 24 hour period on remote call.
- (b) Where an employee on remote call is recalled to work he/she shall be paid in accordance with Clause 13 - Call Back. This shall be in addition to any entitlement under subclause (a) hereof.
- (c) Where practicable an employee will be on remote call for a minimum period of seven consecutive days; otherwise a rotating system averaging at least seven days per employee per cycle shall be worked.

#### **15. CARER'S LEAVE**

- (a) Paid Carer's Leave

- (i) In accordance with this clause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 40 - Sick Leave of this award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

For the purposes of this clause part-time employees, who are not in receipt of a loading in lieu of entitlements to paid leave as specified in Clause 32 - Part-Time Employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlements per annum.

Where a part-time employee's hours of work are not constant the employee's entitlements to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

Leave may be taken for part of a single day.

- (ii) If required the employee must establish, either 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 person.

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- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
  - (1) a member of the employee's immediate family, or
  - (2) a member of the employee's household.

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

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
  - (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

- (i) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.
- (ii) A part-time employee in receipt of a loading in lieu of entitlements to paid leave as specified in Clause 32 - Part-Time Employees shall be entitled to take a maximum of one week's unpaid carer's leave per annum.

Where a part-time employee's hours of work are not constant the employee's entitlements to unpaid carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 months period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

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(c) Grievance Process

Clause 21 - Grievance Procedure of this award applies to a dispute about the effect or operation of this clause.

## **16. CASUAL EMPLOYEES**

A casual employee for working ordinary time shall be paid per hour 1/38th of the weekly rates prescribed for the work he/she performs, plus 20 per cent; such additional amount to be payment in lieu of annual leave as prescribed in Clause 10 - Annual Leave, sick leave as prescribed in Clause 40 - Sick Leave and holidays with pay as prescribed in Clause 23 - Holidays with Pay.

Casual employees' terms of engagement shall be by the hour and they shall be provided with a minimum of two hours work or, alternatively, paid for a minimum of two hours on each occasion they are required to attend for work. However, where work practices are such that it is inappropriate to apply the conditions stipulated by this provision, such conditions may be varied by mutual agreement between the employees, the union and the employer.

## **17. CONTRACT OF EMPLOYMENT**

- (a) Except as otherwise provided, employment shall be by the fortnight. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the fortnight.

An employee, on engagement, shall be classified in accordance with the classification definitions contained in Clause 7 - Definitions.

- (b) Employment shall be terminated by two weeks' notice given by either side or by the payment or forfeiture of two weeks' wages, as the case may be. This shall not affect the right of the employer to dismiss an employee for serious misconduct or serious neglect of duty, in which case wages shall be paid up to the time of dismissal only.
- (c) An employee (other than a casual employee) who is subject to this award, is entitled to be paid in respect of any week, their normal weekly wage at a rate fixed by the award, including overtime and other penalty rates, if any, if:
- (i) due to the act, default or order of an employer, the employee does not work for the maximum number of ordinary working hours specified in the award (in the case of a full-time employee) and the maximum number of ordinary working hours which the employee is contracted to work (in the case of part-time employee); and
  - (ii) the employee is ready and willing to work during those ordinary working hours (specified in paragraph (i) of this subclause) in that week.

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- (d) An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training consistent with the classification structure of this award.

This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

## **18. CONSULTATIVE PROCEDURES**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industry and establishments covered by Clause 2 - Scope and to enhance the career opportunities and job security of employees in the industry and establishment.
- (b) At each enterprise or establishment the employer, the employees and the union shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

## **19. ENTERPRISE FLEXIBILITY**

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
  - (i) The majority of employees affected by the change must genuinely agree to the change.
  - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
  - (iv) The union must be a party to the agreement.
  - (v) The union shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union, and contains the following:

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- (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

## **20. FOUL AND NAUSEOUS LINEN**

Employees working in a laundry who are required to handle unusually foul or nauseous linen as defined by the employer or an employee nominated by the employer shall be paid an amount of \$7.80 per week extra.

Part-time employees and casual employees shall be paid 1/38th of the weekly allowance when so engaged for each hour worked.

## **21. GRIEVANCE PROCEDURE**

The following procedure shall be observed in the resolution of grievances and in the settling of disputes:

- (a) In the event of a grievance or dispute arising, the employee shall attempt to resolve the grievance with his/her immediate supervisor. The accredited union job steward shall be present if requested by either party.
- (b) Should the grievance or dispute not be settled by the discussions referred to in subclause (a), a representative of the union shall discuss the matter in dispute with a representative of the employer.
- (c) If the grievance is still unresolved, the matter should be referred to senior management and the senior local or state union representative.
- (d) Without prejudice to either party and except where a bona fide safety issue is involved, work shall continue in accordance with the award while matters in dispute between them are being processed in accordance with the preceding procedure.
- (e) Subject to the preceding steps having been carried out, nothing in this clause shall prejudice the right of either party to refer the dispute to the Tasmanian Industrial Commission for determination.

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- (f) Except where a bona fide safety issue is involved, until the grievance is determined work shall continue normally in accordance with the custom and practice existing before the grievance arose while discussions take place. No party shall be prejudiced as to the final settlement by the continuance of work.
- (g) Each employer will formulate policies and practices in accordance with these procedures, which shall be circulated to all employees throughout each workplace.

All new employees shall be handed a copy of these procedures on commencement of employment.

## **22. HIGHER DUTIES**

- (a) An employee, other than an administrative employee, engaged continuously for two hours or more on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for such day. If for less than two hours he/she shall be paid the higher rate for the time so worked.

This provision shall apply irrespective of whether or not an employee works in accordance with a roster.

- (b) An employee engaged as an administrative employee who, for a period of five consecutive working days or more, performs the duties of an employee with a higher classification, then that employee shall be paid the rate applicable to the higher paid classification.

## **23. HOLIDAYS WITH PAY**

- (a) All employees (other than casual employees and part-time employees receiving a 20 per cent loading) shall be entitled to the following holidays without deduction from their weekly wages:

Christmas Day, Boxing Day, New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Eight Hours' Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day, Recreation Day in those areas where Hobart Regatta Day is not observed, or such other day as may be observed in the locality in lieu of any of the aforementioned holidays.

- (b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employees concerned, when if it were not for such holiday he/she had been at work.
- (c) Where an employee who is entitled to holidays in accordance with subclause (a) of this clause is required to work on any of the holidays mentioned in that subclause, either for part or the whole of such day he/she shall be paid as follows:

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- (i) In the case of an employee required to work in accordance with a roster - double time.

**PROVIDED** that such rate shall be in substitution for **and not** in addition to the 15 per cent roster loading more particularly set forth in Clause 37 - Roster, subclause (d).

**PROVIDED FURTHER** that this shall not apply where the employee receives holiday leave in accordance with Clause 10 - Annual Leave, paragraphs (c)(ii) and (c)(iii). Such employee shall be paid the ordinary hourly rate for each hour worked plus the roster loading of 15 per cent.

- (ii) Notwithstanding paragraph (i) hereof part-time employees and casual employees who receive a loading in lieu of the provisions prescribed in Clause 10 - Annual Leave, Clause 40 - Sick Leave and subclause (a) of this clause shall be paid at the rate of 1.7 times the relevant award rate for work on a holiday mentioned in subclause (a) of this clause.

- (iii) In the case of all other employees - double time and one half.

- (d) An employee required to work on any of the holidays mentioned in subclause (a) of this clause, where such holiday applies at his/her normal place of work, but because his/her duties require the employee to work at a place where the holiday does not apply, shall have the time in lieu of such holiday added to his/her annual leave entitlement.

- (e) Where work commences between 11.00pm and midnight on a holiday mentioned in subclause (a) of this clause the time so worked before midnight shall not entitle the employee to the amount prescribed in subclause (c) of this clause.

**PROVIDED** that the time worked by an employee before midnight on a day preceding a holiday mentioned in subclause (a) of this clause and extending into such holiday the time worked before midnight shall be regarded as time worked on a holiday.

## **24. HOURS**

- (a) The ordinary hours of work for full-time employees shall be between the hours of 6.00am and 7.00pm, Monday to Friday and:
  - (i) for administrative employees, 37½ hours per week to be worked in five days in continuous periods of 7½ hours per day, except for a meal break of not more than one hours duration.
  - (ii) for all other employees, 38 hours per week to be worked in five days in continuous periods of eight hours per day, except for a meal break of not more than one hours duration.

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**PROVIDED** that the spread of hours or daily hours prescribed may be altered as to all or a section of the employees by mutual agreement between the employer and the employee(s) in the area concerned and the union, provided that the unions agreement shall not be unreasonably withheld.

**PROVIDED FURTHER** that work performed other than by agreement as prescribed above prior to 6.00am and after 7.00pm shall be paid for at overtime rates but shall be deemed, for the purposes of this subclause, to be part of the employee's ordinary hours of work where his/her ordinary hours of work within the period 6.00am to 7.00pm in any week, have been less than 37½ or 38 whichever is applicable.

- (iii) By agreement in writing between an employee and the employer, an employees ordinary hours may be extended to a maximum of 10 ordinary hours per day.

**PROVIDED** that such arrangement may be discontinued by either the employee or the employer giving the other 14 days (one fortnight) written notice.

An arrangement in writing under this subclause shall be signed by the employer and the employee with one copy provided to the employee and one copy kept on the employees employment file.

The employer shall not use this subclause to reduce the full-time equivalent (FTE) staff employed in the nursing home.

An employee who proposes to agree to enter into an arrangement under this subclause shall be provided with a copy of this subclause by the employer prior to such arrangement being effective.

In the event of the arrangements contemplated by this subclause being discontinued, the employee/s shall be returned to pre-existing conditons and shall not suffer any loss or prejudice in employment whatsoever.

No employee (or prospective employee) shall be required by the employer to work under the terms of this subclause as a condition of employment or engagement unless by agreement.

- (iv) Part-time employees (other than a rostered employee) engaged to work outside the spread of hours specified in paragraph (i) hereof shall receive penalty rates as follows:

Monday to Saturday - time and one half for the first two hours, double time thereafter;

Sunday - double time;

Holidays with Pay - double time and one half.

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- (b) Employees may be worked in accordance with a roster, subject to Clause 37 - Roster.

**PROVIDED** that any employee required to work ordinary hours outside the span of hours of 6.00am to 7.00pm, Monday to Friday, shall be worked in accordance with a roster.

- (c) (i) Where an employee is required to work in accordance with a roster, the ordinary hours of work for that employee shall not exceed:

eight in any one day; nor  
48 in any one week; nor  
88 in any 14 consecutive days; nor  
152 in any 28 day accounting period.

- (ii) By agreement in writing between an employee and the employer, an employees ordinary hours may be extended to a maximum of 10 ordinary hours per day.

**PROVIDED** that such arrangement may be discontinued by either the employee or the employer giving the other 14 days (one fortnight) written notice.

An arrangement in writing under this subclause shall be signed by the employer and the employee with one copy provided to the employee and one copy kept on the employees employment file.

The employer shall not use this subclause to reduce the full-time equivalent (FTE) staff employed in the nursing home.

An employee who proposes to agree to enter into an arrangement under this subclause shall be provided with a copy of this subclause by the employer prior to such arrangement being effective.

In the event of the arrangements contemplated by this subclause being discontinued, the employee/s shall be returned to pre-existing conditions and shall not suffer any loss or prejudice in employment whatsoever.

No employee (or prospective employee) shall be required by the employer to work under the terms of this subclause as a condition of employment or engagement unless by agreement.

- (d) (i) Employers will endeavour to implement the 38-hour week in the form of one paid day off in every two consecutive fortnightly pay periods (i.e. the 19 day month).

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However, where an employer encounters operational difficulties in implementation of the 19 day month, discussion may take place with the union on an alternative method of introduction. In the event of disagreement, the matter shall be referred to the Tasmanian Industrial Commission whose decision shall be final and binding. The onus in those proceedings is on the employer to prove the 19 day month creates operational difficulties.

**PROVIDED** that accrued day off shall be rostered to fall on a day of the week other than a Saturday or Sunday. The employer will endeavour to ensure that the accrued day off is rostered to fall either the day immediately before or immediately after rostered days off.

- (ii) Where an employee is absent on leave without pay 24 minutes for each day of absence should be deducted from the accrued day off.
  - (iii) Days of paid absence on holidays with pay and compassionate leave shall count toward the accrued day off on full pay.
  - (iv) Where an accrued day off falls on a holiday with pay as prescribed in Clause 23 - Holidays with Pay, a substituted accrued day off should be taken as soon as possible.
  - (v) Holidays with pay as prescribed in Clause 23 - Holidays with Pay, taken accrue towards an accrued day off.
  - (vi) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (vii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
  - (viii) Where an enterprise system of Rostered Days Off flexibility is introduced, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
  - (ix) An employer shall record Rostered Day Off arrangements in the time and wages book, as prescribed in Clause 44 - Wage and Time Record of the award at each time this provision is used.
- (e) Time Off in Lieu of Payment

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.

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- (ii) Overtime taken as time off during ordinary time hours shall be taken at the appropriate penalty rate equivalent.
  - (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in Clause 30 - Overtime of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
  - (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
  - (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
  - (vi) An employer shall record time off in lieu arrangements in the time and wages book as prescribed in Clause 44 - Wage and Time Record of this award at each time this provision is used.
- (f) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.
- (ii) A rostered employee may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off during ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record make up time arrangements in the time and wages book, as prescribed in Clause 44 - Wage and Time Record of the award at each time this provision is used.

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## **25. LICENCE ALLOWANCE**

An employee directed by the employer to drive vehicles requiring a licence issued by the Department of Roads and Transport, Motor Registry, Licence Section, shall, upon presentation of his/her current licence to the employer, be reimbursed the cost of the driver's annual licence fee.

## **26. LIFTING OF RESIDENTS**

No employee shall be required or permitted to lift or carry by hand any resident who is unable to provide reasonable assistance and weighs over 25kg without the assistance of another person.

**PROVIDED** that where any resident, who is unable to provide reasonable assistance, weighs over 76kg, no employee who is of the opinion that additional assistance is necessary shall be required or permitted to lift or carry by hand such resident without the assistance of two other persons.

The expression 'lift' shall include the following:

- (a) raising a resident in bed;
- (b) raising or moving a resident who has fallen;
- (c) removing a resident from a bed to a chair, wheelchair, commode, trolley, bath or other conveyance or receptacle;
- (d) removing a resident from a chair, wheelchair, commode, trolley, bath or other conveyance or receptacle to a bed or other place.

## **27. MEALS**

- (a) Employees who work in excess of four hours on any day shall, subject to subclause (b), receive a meal break of not more than one hour and not less than 45 minutes duration which shall be unpaid.

**PROVIDED** that the duration of the meal break may be altered by agreement between the employer and the employee.

- (b) Notwithstanding the provisions of subclause (a) of this clause, employees required to work in accordance with a roster shall receive a meal break of 25 minutes which shall be counted as time worked.

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**PROVIDED** that subject to mutual agreement between a representative of the employer and the majority of the employees concerned within a particular work area and with the approval of the Union, such employees shall be allowed to extend their paid 25 minute meal break by not more than 35 minutes each day, which excess shall be exclusive of time worked and unpaid.

- (c) An employee receiving an unpaid meal break and who is directed to work during his/her recognised meal break shall, for all work performed during such period and thereafter until a meal break is allowed, be paid at the rate of time and a half of his/her relevant award rate.
- (d) Meal Allowance

Where the duties of an employee require him/her to travel from his/her headquarters, and the employee is more than or 16 kilometres therefrom at his/her normal meal time, that employee shall, subject to this paragraph be paid:

- (i) In the case of a meal purchased by the employee at any hotel, boarding house, or public eating place, a meal allowance at the following rates:

Meal	Rate of Allowance
Breakfast	\$5.80
Lunch (or midday meal)	\$6.40
Dinner (or evening meal)	\$11.30

- (ii) In the case of a meal provided by the employee, a meal allowance of \$1.90 for each meal so provided.

- (e) Meal Charges

The maximum amount that shall be charged or deducted where an employee receives a meal from his/her employer shall be:

Lunch or Evening Meal	Rate per Meal
Two or three courses	\$3.00
Single hot or cold main course	\$2.40
Single (other) course, i.e. soup or sweet	\$2.20
All breakfasts	\$2.20

**PROVIDED** that:

- (i) A minimum charge of \$2.10 applies for each meal taken.
- (ii) In each case where a one, two or three course meal is ordered and charged for as above, no extra charge is to be levied for either beverages, toast, bread, butter or condiments.

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## **28. NOTICE BOARD**

The employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in the establishment, upon which accredited union representatives shall be permitted to post formal union notices, signed or countersigned by the representative posting same.

## **29. OCCUPATIONAL SUPERANNUATION**

### (a) Definitions

For the purpose of this clause:

**'Eligible employee'** means a person engaged on a full-time or part-time basis who has completed four consecutive weeks of time worked from the date of engagement in any period of employment but does not include an 'intermittent employee'.

**'Employer'** means a health establishment within the scope of this award.

**'Fund'** means the Health Employees Superannuation Trust Australia (HESTA) or any other superannuation scheme agreed to after consultation between the unions and the Tasmanian Confederation of Industries that conforms to the Commonwealth Government's operational standards for Occupational Superannuation.

**'Intermittent employee'** means an employee engaged on a casual basis or an employee engaged on a recurring basis in relieving work who does not complete four consecutive weeks of time worked from the date of engagement.

**'Ordinary pay'** means the ordinary weekly remuneration including shift penalties for rostered work, prior to any deduction for board and lodging, but excluding overtime, annual leave loading, annual leave and/or long service leave payments on termination of employment, uniform allowances and any allowance not paid on a permanent all purpose basis.

### (b) Contributions

- (i) The employer, subject to the provisions of this clause, pay at least monthly to the Trustee of the Fund on behalf of each eligible employee a contribution calculated at the rate of 3 per cent of such employee's ordinary pay for the preceding month.

**PROVIDED** that an employee who was an eligible employee for the period 1 April 1989 to the last full pay period on or before 23 December 1992 shall, for that period, have had contributions paid in accordance with the provisions of the Nursing Homes Award, No. 1 of 1992 (Consolidated).

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- (ii) The contribution payable under paragraph (i) hereof shall apply from the first full pay period on or after 23 December 1992 or from the date on which an employee becomes an eligible employee, whichever is the later.
- (iii) An employer shall not be required to make a contribution for:
  - (1) any period of unpaid leave including leave without pay and unpaid absences due to maternity or sick leave or for any period for which an entitlement to workers' compensation is claimed but for which no payment is made.
  - (2) any period of unauthorised absence for which the employee is not paid.
- (iv) Entitlements to the provisions for death and disablement (in respect of superannuation) are limited, in all circumstances, to those provided for by the terms of the Fund and no liability shall accrue to an employer in respect of such provisions where the employer has satisfied the provisions of this clause.
- (v) Where an employee covered by this award fails to complete or refuses to complete the documentation necessary to join the Fund, the employer shall:
  - (1) inform the employee of the Commission's decision dated 27 February 1989 in Matters T1009 and T1010 of 1987 and T1445, T1469, T1470, T1527 and T1597 of 1988; and
  - (2) provide to the employee a copy of a pro forma "Application for Membership" of the Fund.

In the event that the employee still refuses to join the Fund, the employer shall advise the Tasmanian Chamber of Commerce and Industry Limited and the employee's union for consideration.

**PROVIDED** that where the above procedures are observed the employer shall not be deemed to be in breach of the award by virtue of the fact that no contributions have been made on behalf of the employee. However, following consideration of the matter by the employee's union and the Tasmanian Chamber of Commerce and Industry Limited, where an employee fails to complete or refuses to complete the documentation necessary to join the Fund the employer shall contribute for the employee to the Fund in accordance with the provisions of this clause.

### **30. OVERTIME**

- (a) The employer may require any employee to work reasonable overtime and such employee shall work overtime in accordance with such requirement. No overtime shall be worked without prior approval of the employer.

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For the purposes of this clause overtime shall mean:

- (i) Work in excess of eight hours per day except where ordinary hours are extended in accordance with Clause 24 - Hours, subclause (c), in which case it shall be work in excess of 10 hours per day.
  - (ii) Work in excess of 38 hours per week except where an employee receives an accrued day off in accordance with Clause 24 - Hours, subclause (d), in which case it shall be work in excess of 40 hours per week.
  - (iii) Work outside the span or ordinary hours 6.00am to 7.00pm except where agreement is reached in accordance with Clause 24 - Hours, paragraph (a)(iii).
  - (iv) Work in accordance with Clause 37 - Roster, paragraph (g)(ii).
- (b) For all time worked in accordance with subclause (a) hereof the following overtime rates shall be paid:
- (i) Monday to Saturday inclusive - time and one half for the first two hours and double time thereafter;
  - (ii) Sunday - double time;
  - (iii) Holidays with Pay - double time and one half.
  - (iv) An employee required to work in accordance with a roster shall be paid double time for all overtime. But such payment shall not apply to those cases where arrangements have been made between the employees themselves.
  - (v) Each days overtime shall stand alone.
- (c) Unless the period of overtime is one and a half hours or less, an employee before starting overtime shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates. An employer and an employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that no employee shall be required to work more than five hours without a break for a meal.
- (d) An employee required to work for more than two hours without being notified on the previous day or earlier that he/she will be so required shall, either be supplied with a meal by the employer or paid \$5.00 in lieu thereof.
- (e) The allowances prescribed in this award shall not be taken into consideration in the computation of overtime.
- (f) The calculation of the overtime penalty prescribed in this subclause in the case of an employee in receipt of a loading in lieu of sick leave, annual leave and holidays with pay shall be based upon the relevant award rate.

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- (g) Where there is agreement between the employer and the employee, time off in lieu of overtime may be taken at the penalty rate equivalent.

**PROVIDED** that such agreement involves the employee indicating that he/she has had an opportunity to consult with a union official.

**PROVIDED FURTHER** that such agreements may be concluded by mutual consent of both parties or at the request of one such party.

- (h) (i) An employee (other than a casual employee) who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that the employee has not had at least eight consecutive hours off duty between those times, shall, subject to this clause, be released after completion of such overtime until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (ii) If on the instructions of the employer such an employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at double rates until released from duty for such period, and shall then be entitled to be absent until he/she has eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (iii) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least eight consecutive hours off duty between the work of successive days.

### **31. 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.

**PROVIDED** that Part B, Part C and Part D shall have an operative date of 1 January, 1993.

#### **PART A - MATERNITY LEAVE**

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

**'Child'** means a child of the employee under the age of one year.

**'Continuous service'** means service under an unbroken contract of employment and includes:

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- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'Paternity leave'** means leave of the type provided for in Part B - Paternity Leave.

**'Spouse'** includes a de facto or a former spouse.

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

At the time specified in subclause (e) hereof the employee must produce to her employer:

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) 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.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

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- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a Safe Job

Where 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 shall, 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.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
  - (1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; .
  - (2) The period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
  - (i) 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:
    - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
  - (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, which the employee is qualified for and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
  - (i) Provided the aggregate of any leave including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.

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- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(k) Effect of Maternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

## **PART B - PATERNITY LEAVE**

- (a) Nature of leave

Paternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

**'Continuous service'** means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'Maternity leave'** means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

**'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.

**'Spouse'** includes a de facto or a former spouse.

- (c) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by subclause (d) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;

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- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in subclause (e) the employee must produce to his employer:

- (i) 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 of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
  - (1) he will take that period of paternity leave to become the primary care-giver of the child;
  - (2) particulars of any period of maternity leave sought or taken by his spouse; and
  - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
  - (1) the birth occurring earlier than the expected date; or
  - (2) the death of the mother or the child; or
  - (3) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

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(f) Variation of Period of Paternity Leave

- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
  - (1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
  - (2) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(h) Paternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

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(ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave

(i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

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

### **PART C - ADOPTION LEAVE**

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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**'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.

**'Continuous service'** means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause, or
- (iii) any period of leave or absence authorised by the employer or by the award.

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.

**'Relative adoption'** occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

**'Spouse'** includes a de facto spouse.

(c) Eligibility

An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of the placement of the child;
- (ii) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
  - (1) any period of leave taken pursuant to paragraph (i) hereof; and
  - (2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

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(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
  - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
  - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, 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 the employee's spouse; and
  - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.

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- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
    - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and employee.
  - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

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(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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 shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

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- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

#### **PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

**'Continuous service'** means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

**'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.

**'Former position'** means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this part whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

**'Male employee'** means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

**'Spouse'** includes a de facto spouse.

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(b) Entitlement

With the agreement of the employer:

- (i) A male 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.
- (ii) 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.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(d) 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.

(e) Pro Rata Entitlements

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

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(f) Transitional Arrangements - Annual Leave

- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.
- (ii)
  - (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
  - (2) 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.

(g) Transitional Arrangements - Sick Leave

An employee working part-time under this part shall have sick 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.

(h) Part-Time Work Agreement

- (i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:
  - (1) that the employee may work part-time;
  - (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
  - (3) upon the classification applying to the work to be performed; and
  - (4) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) 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.

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(iv) The terms of this agreement shall apply to the part-time employment.

(i) Termination of Employment

(i) 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.

(ii) 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.

(j) 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 subclause (h).

(k) 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.

(l) 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:

(i) limiting the number of employees who may work part-time;

(ii) establishing quotas as to the ratio of part-time to full-time employees;

(iii) prescribing a minimum or maximum number of hours a part-time employee may work; or

(iv) requiring consultation with, consent of or monitoring by a union;

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

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(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service as provided for in subclause (a) - Definitions, '**Continuous service**' of this part.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

**32. PART-TIME EMPLOYEES**

- (a) Part-time employees shall be entitled to all conditions prescribed by this award subject to this clause and specific restrictions contained in other clauses of this award.
- (b) Part-time employees engaged to work 20 or more hours per week shall be entitled to annual leave and sick leave as prescribed in Clause 10 - Annual Leave and Clause 40 - Sick Leave and the holidays prescribed in Clause 23 - Holidays With Pay, provided that payment therefore shall be made at the rate normally paid to such employee for a similar period of time worked.

The wage payable per hour shall be:

- for administrative employees, 2.66 per cent of the relevant wage rate contained in Clause 8 - Wage Rates;
  - for all other employees, 1/38th of the relevant wage rate contained in Clause 8 - Wage Rates.
- (c) Part-time employees engaged to work less than 20 hours per week shall in addition to the hourly rate contained in subclause (a) hereof receive a loading of 20 per cent, such loading being in lieu of annual leave as prescribed in Clause 10 - Annual Leave, sick leave as prescribed in Clause 40 - Sick Leave and holidays with pay as prescribed in Clause 23 - Holidays with Pay.
  - (d) The penalty rates prescribed for employees for work on Saturdays, Sundays are applicable to part-time employees.

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**PROVIDED** that a part-time employee who receives a loading in lieu of sick leave, annual leave and holidays with pay shall be paid at the rate of 1.7 times the relevant award rate for work on a holiday with pay as prescribed in Clause 23 - Holidays with Pay.

- (e) An employee who receives a loading in lieu of holidays with pay, annual leave and sick leave shall be entitled to elect to take up to four weeks' leave without pay in any one leave year. Leave under this provision shall not be cumulative.

Leave allowed under this subclause may be taken by mutual agreement in not more than two separate periods.

- (f) **PROVIDED** that part-time employees shall be provided with a minimum of two hours work or, alternatively, paid for a minimum of two hours on each occasion they are required to attend for work. However, where work practices are such that it is inappropriate to apply the conditions stipulated by this provision, such conditions may be varied by mutual agreement between the employees, the union and the employer.

- (g) Where there is agreement between the employer and the employee, a part-time employee engaged to work less than 20 hours per week may receive pro-rata benefits in respect to holidays with pay, sick leave and annual leave as prescribed in Clause 23 - Holidays with Pay, Clause 40 - Sick Leave and Clause 10 - Annual Leave in lieu of the 20 per cent loading.

**PROVIDED** that such agreement involves the employee indicating that he/she has had an opportunity to consult with a union official.

**PROVIDED FURTHER** that such agreement may be discontinued by mutual consent of both parties or at the request of one such party.

- (h) Where there is agreement between the employer and the employee, a part-time employee engaged to work 20 or more hours per week may receive a loading of 20 per cent, such loading being in lieu of annual leave, sick leave and holidays with pay as prescribed in Clause 10 - Annual Leave, Clause 40 - Sick Leave and Clause 23 - Holidays with Pay.

**PROVIDED** that such agreement involves the employee indicating that he/she has had an opportunity to consult a union official.

**PROVIDED FURTHER** that such agreement may be discontinued by mutual consent of both parties or at the request of one such party.

### **33. PAYMENT OF WAGES**

- (a) Wages, including overtime, shall be paid by direct bank deposit or some other method agreed by the employer at intervals of not more than two weeks and not later than Thursday of the week of payment.

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- (b) Where the method of payment of wages is via direct bank deposit the employee may nominate which bank or financial institution into which his/her wages shall be paid.
- (c) (i) An employee kept waiting for payment of wages for more than a quarter of an hour after the usual time for ceasing work on the employees' normal pay day, due to any action or default of the employer, shall be paid waiting time at the rates prescribed in Clause 30 - Overtime for all time kept so waiting for his or her pay, irrespective of whether the employee waits at his or her normal place of employment.

**PROVIDED** that where the employees wages are paid within the first fifteen minutes after the usual time of ceasing work, a minimum payment of 15 minutes shall be made in accordance with this provision.

**PROVIDED FURTHER** that an employee shall not receive more than eight hours pay at the rate prescribed in this subclause in any 24 hour period.

- (ii) No employee shall receive in the aggregate more than overtime rates for each hour the employee is kept so waiting, whether that employee is at work or not.
- (iii) Allowances prescribed by this award shall not be taken into account in the calculation of waiting time rates as prescribed by this subclause.
- (d) (i) An employee kept waiting for wages for more than a quarter of an hour after the usual time for ceasing work on the normal pay day due to circumstances beyond the control of the employer shall not be provided with waiting time payments as prescribed in subclause (c) of this clause.
- (ii) In circumstances where payment of wages is delayed due to reasons beyond the control of the employer, the employer shall do all things reasonable and possible to arrange an alternative method of payment as soon as it becomes known to the employer that the employees pay will be delayed.
- (e) (i) On pay day, the employer shall state in writing to the employee, the amount of wages to which he/she is entitled, the amount of tax deductions made therefrom, the amount of any other deductions made therefrom and the net amount being paid to him/her.
- (ii) Where the hourly rate, or the number of ordinary hours per week of an employee is changed, or in the case of back monies due, annual leave payment and payment on termination, the employer shall state the particulars separately in writing.
- (f) Where a holiday with pay falls on a normal pay day wages shall be paid on the day prior to that holiday.

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### **34. PROBATION**

- (a) An employee may be employed on probation for a period not exceeding 494 hours worked.
- (b) An employee to be employed on probation shall be appointed to a classification in accordance with Clause 8 - Wage Rates.

Further the employee shall be entitled to all provisions of this award.

- (c) At the expiration of the probation period employment shall continue unless the work performance of the employee is unsatisfactory.

In the event of a dispute arising as a consequence of this subclause, the dispute shall proceed in accordance with Clause 21 - Grievance Procedure.

### **35. PROTECTIVE CLOTHING AND SAFETY REQUIREMENTS**

- (a) The employer shall provide where necessary, suitable protective clothing for the employees. An employee who is pursuant to this subclause, supplied with protective clothing, shall wear such clothing in such a way as to achieve the purpose for which it is supplied.
- (b) The employer shall maintain at its own expense full and sufficient supplies of safety appliances, such as rubber gloves, disinfectants or other materials required to be used in the course of the employees duties.

An employee who is required, in accordance with this subclause, to use the safety requirements provided by the employer shall use them for the purpose they were intended.

- (c) Compensation to the extent of the damage sustained shall be made where, in the course of the work, an employee's clothing is damaged, destroyed by fire or the use of corrosive substances.

### **36. RIGHT OF ENTRY**

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

### **37. ROSTER**

- (a) Employees required to work ordinary hours outside the span of hours 6.00am to 7.00pm, Monday to Friday shall be worked in accordance with a roster established in accordance with this clause.

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- (b) Where a roster is established in accordance with this clause, such roster shall be documented setting out clearly the names of the employees required to work in accordance with such roster, the days, dates and hours during which each employee is required to attend for duty.
- (c) (i) A roster established under this clause shall be a rotating roster unless:
  - (1) the employer and all the employees to be affected in a particular nursing home agree to a non-rotating roster;
  - (2) the employer directs an employee(s) to work in accordance with a non-rotating roster.
- (ii) In circumstances where a non-rotating roster has been established in accordance with subparagraph (i)(1) above, such non-rotating roster shall not be changed to a rotating roster unless the employer and the majority of employees affected in a particular nursing home agree.
- (d) A rostered employee who works part or all of their daily hours between 7.00pm and 6.00am shall be paid a loading of 15 per cent on the hourly rate for all hours worked on such day.
- (e) A roster established in accordance with this clause, whether rotating or non-rotating, shall:
  - (i) not require an employee to work more than eight hours each day subject to agreement being reached otherwise in accordance with Clause 24 - Hours;
  - (ii) provide for not more than eight days to be worked in any nine consecutive days;
  - (iii) not be changed until after four weeks notice or in the case of an individual employee shall not be changed except on one weeks notice of such change or the payment of two weeks pay in lieu of notice in accordance with the employees previous roster;
  - (iv) provide for a minimum of two consecutive days off each week except where, by mutual agreement between the employer, the employee(s) concerned and the secretary of the union or authorised representative, alternative arrangements are made;
  - (v) clearly stipulate a 28 day accounting period which shall include an accrued day off in addition to eight rostered days off.

**PROVIDED** that staff engaged to provide relief on accrued days off pursuant to this subclause, while engaged in such capacity, shall be regarded as rostered employees for all purposes of the award (except additional annual leave). Rosters covering such relief employees shall not be required to rotate.

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- (f) A rostered employee shall work their eight hour day continuously and subject to the proviso such continuous hours shall not be broken.

**PROVIDED** that in an emergency situation the continuous hours may be broken by mutual agreement between the employer and the employee with the approval of the union. All work performed in excess of a spread of nine hours shall be paid at the rate of double time.

- (g) Part-time employees and casual employees engaged as a rostered employee, for work outside the roster, documented in accordance with subclause (b) hereof, shall be entitled to the provisions of this clause with the following exceptions:

- (i) Where an employee works by agreement with the employer he/she shall not attract a penalty (other than roster loading, Saturday, Sunday and Holiday with Pay penalty) provided that any time worked in excess of eight hours per day shall be paid at double time except as provided in Clause 24 - Hours, subclause (c),

OR

- (ii) Where an employee is instructed to work, he/she shall be entitled to overtime payments in accordance with Clause 30 - Overtime.

- (h) (i) Where an employee working on a rotating roster is directed to work on a non-rotating roster against their express wishes, such employee shall be paid 30 per cent more than his/her ordinary hourly rate for the whole period so worked. The 30 per cent shall be in substitution for and not cumulative upon the 15 per cent roster loading.

- (ii) Where an employee is directed to work a non-rotating roster, against their express wishes, on a work pattern where the work commences between the hours of 4.00pm and 6.00am such employee shall be paid 30 per cent more than his/her ordinary hourly rate for the whole period so worked. The 30 per cent shall be in substitution for and not cumulative upon the 15 per cent roster loading.

- (i) For the purposes of this award, rosters that are in place in a nursing home prior to the first full pay period commencing on or after 23 December 1992 and do not comply with the definition of a rotating roster contained in Clause 7 - Definitions, shall be deemed to be non-rotating rosters established in accordance with subparagraph (c)(i)(1) hereof.

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### **38. SATURDAY AND SUNDAY WORK - ROSTERED EMPLOYEES**

(a) Saturday Work

Rostered employees for working ordinary hours, the major portion of which falls on a Saturday, shall be paid at the rate of time and one half of the employee's ordinary hourly rate for all hours worked on such day, but such rates shall be in substitution for and not cumulative upon the 15 per cent roster loading described in Clause 37 - Roster. The provisions of this subclause shall not prejudice any right of an employee to obtain alternatively any higher rate in respect of that work by virtue of any provision of this award.

(b) Sunday Work

Rostered employees for working ordinary hours, the major portion of which falls on a Sunday, shall be paid at the rate of double time of the employee's ordinary hourly rate for all hours worked on such day, but such rates shall be in substitution for and not cumulative upon the 15 per cent roster loading described in Clause 37 - Roster.

(c) Where work commences between 11.00pm and midnight on a Sunday the time so worked before midnight shall not entitle the employee to the Sunday rate provided that the time worked by an employee before midnight on a Saturday and extending into Sunday the time worked before midnight shall be regarded as time worked on Sunday.

### **39. SAVING**

Nothing herein contained shall be taken to reduce the wage rate of any employee who is in receipt of a higher wage rate at the date of this award.

### **40. SICK LEAVE**

(a) An employee who is absent from work on account of personal illness, or on account of injury by accident, shall be entitled to leave of absence on full pay (excluding roster or weekend allowances or overtime penalties) subject to the following conditions and limitations.

An employee shall:

- (i) not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers compensation;
- (ii) within 24 hours of the commencement of such absence, inform the employer of his/her inability to attend for duty, and, as far as practicable state the nature of the injury or illness and the estimated duration of the absence;

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- (iii) prove to the satisfaction of the employer that he/she was unable, on account of such illness or injury, to attend for duty on that day or days on which leave is claimed;
  - (iv) not, except as prescribed in subclause (b) hereof, be entitled in any one year (whether in the employ of one employer or of several) to leave in excess of 152 hours in the case of those employees whose full-time hours are 38 per week or 150 hours in the case of those employees whose full-time hours are 37½ per week (20 working days), provided that in the first year of service an employee shall only be entitled to 12½ hours for each completed month of service in the case of 37½-hour week employees, and 12 hours 40 minutes for each completed month of service in the case of 38-hour week employees.
- (b) If the full period of sick leave, as prescribed in subclause (a) hereof is not taken in any year, such proportion as is not taken shall be cumulative from year to year without limitation.
  - (c) Notwithstanding any other provisions in this clause, an employee who contracts an infectious disease and/or who, on examination, reveals a changed mantoux reaction in the course of his/her duties, and same having been certified to by a medical practitioner approved by the employer, shall receive full pay during the period of duty up to but not exceeding 12 weeks, and during this time shall be regarded as remaining in the employ of the employer for the purposes of the *Workers' (Occupational Diseases) Relief Fund Act*.
  - (d) An employee who is certified as unfit for duty because of personal illness by a medical practitioner approved by the employer during a period of annual leave, shall be given credit for the time so certified and the paid recreational leave shall be extended by the number of days that the employee has been so certified as unfit for duty.
  - (e) An employee who falls sick by reason of his/her work shall, subject to the recommendation of a medical practitioner, be paid an amount of wages not less favourable than that prescribed by the *Workers' (Occupational Diseases) Relief Fund Act*.
  - (f) A year for the purposes of this clause shall mean 365 days' employment in an approved nursing home including rostered days off, holidays with pay, paid annual leave and paid sick leave and excluding weekends.
  - (g) If an employee is absent on sick leave on the day immediately preceding or immediately following the accrued day off he/she shall provide a medical certificate in support of such absence.
  - (h) (i) Part-Time Employees  
  
Part-time employees who are accruing a sick leave entitlement in accordance with Clause 32 - Part-Time Employees, shall have their sick leave entitlement calculated in the following manner:

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152 (full-time equivalent entitlement) divided by 365 (calendar days per year) multiplied by 7 (days per week) divided by 38 (full-time equivalent weekly working hours) = 0.0767 hours sick leave entitlement for each hour worked.

**PROVIDED** that in determining the amount of leave to which an employee is entitled at any time (other than leave which has been accumulated) the average hours worked per week in the preceding three months shall be used, except that where an employee has less than three months service, the period per week for which he/she was engaged shall be used.

**PROVIDED FURTHER** that in determining the amount of leave to be accumulated for the purposes of subclause (b) the entitlement shall be based on the average number of hours worked in the year (less the period of sick leave taken).

#### **41. TOOL ALLOWANCE**

In addition to the wage rates contained in Clause 8 - Wage Rates of this award, a Services Employee Level 5 or above who is employed to perform the work of a carpenter shall be paid a tool allowance of \$7.60.

#### **42. UNIFORMS**

- (a) Employees, other than Executive Staff, shall be provided, free of cost by the employer, sufficient, suitable and serviceable uniforms or by mutual agreement be paid an allowance of \$4.00 per week as an allowance not subject to loading or penalty addition, for each week or part thereof on paid employment including periods of approved annual leave.

**PROVIDED** that this clause shall not apply where the employer is prohibited from instructing employees to wear uniforms by any Act of the State or Federal Parliaments.

- (b) All uniforms provided by the employer shall be laundered free of cost to the employee.
- (c) An employee, on leaving the service of an employer, shall return any uniform or part thereof provided by that employer which is still in use by him/her immediately prior to leaving.

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#### **43. UNION STEWARDS**

An employee appointed as a job steward, upon notification by the union to the employer, shall be recognised as the accredited representative of the union to which he/she belongs and he/she shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he/she represents and further shall be allowed reasonable time during working hours to attend to job matters affecting his/her union.

**PROVIDED** that a job steward shall seek the permission of the head of department before interviewing employees other than in his/her own department and such permission shall not be reasonably withheld.

#### **44. WAGE AND TIME RECORD**

Each employer shall keep employment records as required by the *Industrial Relations Act 1984* and the Industrial Relations Regulations 1984 ( as amended).

#### **45. WORK DONE ABOVE FLOOR LEVEL**

In no circumstances shall appliances other than a suitable platform or a ladder be used for carrying out work above floor level. Where such work is performed, the appliance shall at all times be secured, or held by another person. No employee who has reasonable objection to the performance of duties above floor level shall be compelled to carry out such work unless such duties were specified at the time of employment.

Tim Abey  
**COMMISSIONER**

23 August 2001

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## APPENDIX

### GUIDE TO IMPLEMENTATION

#### Comparative schedule of old classifications to new broadbanded levels

##### ADMINISTRATIVE EMPLOYEES

<u>Old classification</u>	<u>Administrative Employee New Level</u>
Clerks - Adult	
1st year of service	2b
2nd year of service	2b
3rd year of service	2b
4th year of service	2b
5th year of service	3b
6th year of service	3b
7th year of service	3b
8th year of service	3b
Clerk in charge	5
Office Assistant	1b
Typists - Adult	1b

##### EXTENDED CARE ASSISTANTS

<u>Old classification</u>	<u>Extended Care Assistant New Level</u>
Nursing Assistant	
1st year of service	2
2nd year of service	2
3rd year of service	3
4th year of service	3
Therapy Assistant	
1st year of service	2
2nd year of service	2
3rd year of service	4
4th year of service	4

##### SERVICES EMPLOYEES

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<u>Old Classification</u>	<u>Services Employee New Level</u>
Assistant Domestic Supervisor	
1st year of service	3
2nd year of service	3
Carpenter	
1st year of service	5
2nd year of service	5
3rd year of service	6
4th year of service	6
5th year of service	6
Cooks - (Qualified)	
1st year of service	5
2nd year of service	5
3rd year of service	6
4th year of service	6
5th year of service	6
Cook in charge of 1 - 4 cooks	
1st year of service	7
2nd year of service	7
Cook in charge of more than 4 cooks	7
Cook - (Unqualified)	4
Domestic Supervisor or Housekeeper	
1st year of service	4
2nd year of service	4
Driver	4
Driver/Handyman	4
Gardener	
1st year of service	3
2nd year of service	3
3rd year of service	3
4th year of service	3
Gardener in charge	
1st year of service	4
2nd year of service	4
3rd year of service	4
4th year of service	4

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General Repairs or Handyman	
1st year of service	3
2nd year of service	3
3rd year of service	3
4th year of service	3
Head Waitress	
1st year of service	3
2nd year of service	3
Laundress	
1st year of service	1
2nd year of service	1
3rd year of service	2
4th year of service	2
Laundress in charge	
1st year of service	3
2nd year of service	3
Machinist/Seamstress	
1st year of service	1
2nd year of service	1
3rd year of service	2
4th year of service	2
Wardmaid, Kitchenmaid, Theatremaid, Housemaid and Waitress	
1st year of service	1
2nd year of service	1
3rd year of service	2
4th year of service	2