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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for an award or variation of an award

Tasmanian Trades and Labor Council

[T10230 of 2002]

Private Sector Awards

[T10288 of 2002]

Private Sector Awards

[T10289 of 2002]

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT R J WATLING

COMMISSIONER T J ABEY

Wage Rates - State Wage Case July 2002 - applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002002 - Safety Net Review 2002 - Award rates increased by - \$18 per week - Wage related allowances increased by 3.55% - Meal allowances increased to \$11.90 - Supported Wage increased to \$56 per week - Operation fpp 1 August 2002 - State Minimum Wage determined at \$431.40-s.35(1)(b)

ORDER BY CONSENT

INDEPENDENT SCHOOL (NON TEACHING STAFF) AWARD

**No.1 of 2002
(Consolidated)**

CLAUSES 3, 4, 5, 8, 18 AND 22 ARE VARIED, AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Independent Schools (Non Teaching Staff) Award.

2. SCOPE

This award is established in respect of:

- (a) Independent schools, non government educational establishments and boarding schools, other than employees within the jurisdiction of the Catholic Education Award; and
- (b) Hostels associated with boarding schools and other educational establishments, other than hostels within the jurisdiction of the Welfare and Voluntary Agencies Award (P072).

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall be operative from the first full pay period commencing on or after 1 August 2002.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Independent Schools [Non-Teaching Staff] Award No 1 of 2000 [Consolidated], No. 2 of 2000, No. 3 of 2000, No. 4 of 2000, No. 1 of 2001 and No. 2 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 employed in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:

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- (i) the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (ii) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (iii) the Australian Nursing Federation, Tasmanian 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

'Administrative Employee'

Grade 1a: An employee at this level shall be a Grade 1b employee with less than 9 months experience;

Grade 1b: Employees graded at this level may be engaged on tasks requiring direct supervision performing work within established routines, methods and procedures.

- Indicative tasks at this level would include the work of telephonist or mail-person;

Grade 2a: An employee at this level shall be a Grade 2b employee with less than 9 months experience.

Grade 2b: Employees graded at this level may be engaged on tasks using a more extensive range of skills and knowledge at a higher level than Grade 1. They may be responsible and accountable for their own work which is performed within established routines, methods and procedures and would be subject to routine supervision.

- Indicative tasks at this level would include the work of copy-typists, computer entry/retrieval, reception and banking.

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Grade 3: Employees graded at this level may be engaged on tasks at a level higher than Grade 2. They are responsible and accountable for their own work which is performed within established guidelines, using some discretion and would be subject to only general supervision. They may be involved in the supervision/assistance of students.

- Typically the employees will have undergone training either at work or in a post-secondary institution but shall not be required to hold any post-secondary qualifications to be paid at this level.
- Indicative tasks at this level would include the work of a stenographer, audio-typist, and computer operator.

Grade 4: Employees graded at this level may be engaged on tasks at a level higher than Grade 3. They are responsible and accountable for their own work and exercise discretion and initiative in the organisation of work. They are subject to limited supervision and may have supervision of other employees.

- Typically the employee will have undergone extensive training either at work or in a post-secondary institution but shall not be required to hold any post-secondary qualifications to be paid at this level.
- Indicative tasks at this level would include the work of a senior clerk, secretary or assistant accountant.

Grade 5 Employees graded at this level may be engaged on tasks at a level higher than Grade 4. They are responsible and accountable for their own work and may have responsibility for the work of others. They exercise initiative, discretion and judgement.

- Indicative tasks at this level would include the work of a private secretary, personnel officer or accountant.

'Casual Employee' means a person who is employed on a casual basis and shall include any person employed for a period not exceeding 5 days at any one time, but shall not include a part-time employee (as defined).

'Classroom/Curriculum Employee'

Grade 1: Employees graded at this level may be engaged on tasks requiring supervision and direction and liaise with teaching staff regarding lesson preparation and delivery.

- Typically no prior experience or qualification is required for this level.

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- Indicative tasks at this level would include the work of teacher's aide, library assistant or laboratory assistant.

Grade 2: Officers graded at this level may be engaged on tasks requiring only routine direction and the officer would operate under supervision but exercise a degree of autonomy.

- Typically an officer at this level would have the skill required to perform the tasks either as a result of experience (satisfactory to the employer) or relevant qualifications or both.
- Indicative tasks at this level would include the work of a library technician level one or laboratory technician level one.

Grade 3: Officers graded at this level may be engaged on tasks requiring only general direction and would be subject to little direct supervision and would be expected to exercise initiative and responsibility. An officer at this level would be responsible to a Grade 4 officer or a teacher.

- Typically an officer at this level would have the skill required to perform the tasks either as a result of experience (suitable to the employer) or relevant qualifications or both.
- Indicative tasks at this level would include the work of library technician level 2 or laboratory technician level 2.

Grade 4: Officers graded at this level may be engaged on tasks requiring limited direction and may be required to supervise officers grades 1, 2 or 3. An officer at this level would normally be responsible to the Principal and have responsibility for a large autonomous unit.

- Typically an officer at this level would have the skill required to perform the tasks either as a result of experience (suitable to the employer) or qualifications or both.
- Indicative tasks at this level would include the work of senior technician or librarian.

'Part-time Employee' means a person engaged to work on a regular basis for less than 52 weeks per year and/or less hours per day or week than those prescribed for full-time employees.

'School Services Employee'

Grade 1: An employee at this level shall be an employee who is undergoing induction and initial job training.

- Typically this grade may apply to employees during the first three months of employment.

Grade 2: Employees graded at this level may be engaged on tasks requiring direct supervision, performing routine tasks involving minimal training and little or no discretion on the part of the employee.

- Indicative tasks at this level would include the work of a pantry hand, kitchen hand, laundry hand or housemaid.

Grade 3: Employees graded at this level may be engaged on tasks requiring the employee to work without supervision from time to time and may require the performance of tasks involving the use of some discretion on the part of the employee.

- Typically the employee will have undergone some on the job training on this work.
- Indicative tasks at this level would include the work of a cleaner, groundsman or yardman.

Grade 4: Employees graded at this level may be engaged on tasks requiring the employee to exercise a significant degree of discretion regarding the performance of their work.

- Typically the employee will have undergone some training either at work or in post-secondary institution but shall not be required to hold any post-secondary qualifications to be paid at this level.
- Indicative tasks at this level would include the work of a cook, assistant matron, assistant housekeeper shop assistant or driver.

Grade 5: Employees graded at this level shall either be engaged on tasks provided for in Grade 4 with additional supervisory responsibilities or shall hold trade qualifications relevant to their duties.

- Indicative tasks at this level would include those of a carpenter, painter, chef, matron or housekeeper.

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Grade 6: Employees graded at this level shall be engaged on tasks provided for in Grade 5 with additional supervisory responsibilities or shall be employees with responsibilities greater than those required for level 5.

- Indicative tasks at this level would include those of senior matron.

'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, therefore making a total of 11 paid public holidays per year.

8. WAGE RATES

(a) Adults

Employees of a classification in the groups set out hereunder shall be paid per week the amount assigned to that group of classifications.

	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
GROUP A includes: School Services Employee Grade 1	78	325.40	106.00	431.40
GROUP B includes: School Services Employee Grade 2	82	342.10	106.00	448.10
GROUP C includes: School Services Employee Grade 3	87.4	364.60	106.00	470.60
GROUP D includes: Administrative Employee Grade 1a	90	374.20	106.00	480.20
GROUP E includes: School Services Employee Grade 4 Administrative Employee Grade 1b Classroom/Curriculum Employee Grade 1	92	384.20	106.00	490.20
GROUP F includes: Administrative Employee Grade 2a	95	394.70	106.00	500.70
GROUP G includes: Administrative Employee Grade 2B	97	404.70	106.00	510.70

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	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
GROUP H includes: School Services Employee Grade 5 Administrative Employee Grade 3 Classroom/Curriculum Employee Grade 2	100	417.20	108.00	525.20
GROUP I includes: School Services Employee Grade 6 Administrative Employee Grade 4	110	458.90	108.00	566.90
GROUP J includes: Classroom/Curriculum Employee Grade 3	115	479.80	106.00	585.80
GROUP K includes: Administrative Employee Grade 5 Classroom/Curriculum Employee Grade 4	130	542.40	106.00	648.40

(b) Juniors

The minimum weekly wage rate that shall be paid to junior employees shall be the undermentioned percentages of the appropriate adult weekly wage rate.

(i) School Services Employee	%
Under 18 years of age	75
18 years of age and over	100
(ii) Other	%
Under 18 years of age	53
18 to 19 years of age	65
19 to 20 years of age	77
20 to 21 years of age	81

(c) Supported Wage System

(i) Eligibility criteria

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

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

(ii) For the purposes of this subclause:

- (1) **“Supported Wage System”** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (2) **“Accredited Assessor”** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (3) **“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.
- (4) **“Assessment instrument”** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(iii) Supported wage rates

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

Assessed capacity(paragraph (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 \$56 per week.

(iv) 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:

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

(v) Lodgment of assessment instrument

- (1) All assessment instruments under the conditions of this subclause, 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.

- (2) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, 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.

(vi) 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.

(vii) 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 subclause 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.

(viii) Workplace adjustment

An employer wishing to employ a person under the provisions of this subclause 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.

(ix) Trial Period

- (1) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (2) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (iv) and (v).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$56 per week or such greater amount as is agreed from time to time between the parties.

- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (iii) hereof.

(d) Minimum Wage

(i) Minimum Wage

No employee shall be paid less than the minimum wage.

(ii) Amount of Adult Minimum Wage

- (1) The minimum wage for full-time adult employees not covered by subclause (c) - Supported Wage System is \$431.40 per week.
- (2) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (ii)(1).
- (3) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (ii)(1) according to the number of hours worked.

(iii) How the Minimum Wage Applies to Juniors

- (1) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (iii)(2) is greater.
- (2) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (ii)(1).

(iv) Application of Minimum Wage to Certain Employees

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

(v) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (1) applies to all work in ordinary hours;
- (2) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (3) is inclusive of the arbitrated safety net adjustment provided by the July 2002 State Wage Case Decision (T.10230 of 2002) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

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

(b) Annual Leave Exclusive of Public Holidays

If a holiday prescribed in Clause 19 - Holidays with Pay of this award 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 that leave one day for each holiday so occurring.

(c) Payment in Lieu Prohibited

Except as provided in subclause (g) of this clause, payment shall not be made or accepted in lieu of annual leave.

(d) The annual leave provided for by this clause shall be given and taken at a time mutually agreed upon by the employer and the employee, provided that no entitlement shall be permitted to accrue beyond 6 months after becoming due.

Where the employer and the employee so agree, annual leave may be broken into any combination provided that one period shall be at least 2 weeks (equivalent to 10 working days).

In the absence of agreement, annual leave shall be given in one period at a time fixed by the employer, after at least one month's notice to the employee, and within 6 months of the date when the annual leave became due.

(e) Payment for Period of Leave

- (i) Subject to paragraph (ii) of this subclause, each employee before going on leave shall be paid the amount of wages he would have received in respect of the ordinary time which he would have worked had he not been on annual leave during the relevant period, plus a loading equal to 17 1/2 per cent.
- (ii) In the event of an employee's weekly hours of work having varied in the period during which the annual leave accrued, the number of hours per week on which annual leave payments are calculated shall be the average number of hours per week worked during the said period of accrual.

(f) Leave Allowed Before Due Date

- (i) An employer may allow annual leave to an employee before the right thereto has accrued, but where such leave is taken, a further period of annual leave shall not commence to accrue until after the expiration of the period in respect of which annual leave has been taken before it accrued.
- (ii) Where leave has been granted pursuant to this subclause and the employee subsequently leaves or is discharged from the service of the employer before completing the continuous service in respect of which the leave was granted, the employer may deduct from whatever remuneration is payable to the employee on termination of employment, an amount equal to the difference between the moneys paid for leave allowed before the due date and the moneys that would otherwise have been due under the provisions of subclause (g) of this clause.

(g) Proportionate Leave on Termination of Service

Where employment is terminated before the expiration of any 12 monthly qualifying period, payment shall be made on the basis of 4/52 of a week's pay for each completed week of service.

- (h) Subclauses (a) to (g) of this clause shall not apply to an employer who elects to allow a school services employee school or term holidays each year, provided that he:
- (i) provides such employees with not less than 10 full weeks' annual leave per calendar year;
 - (ii) pays them for such leave at a rate not less than 2/3 their normal rate of pay;
 - (iii) pays them an additional amount at the appropriate rate for any day during such leave period on which they come in and work;

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- (iv) where an employee is dismissed prior to receiving the full annual leave provided under this subclause, he shall not receive less than an amount of pro rata annual leave payment equal to the proportion of the school year during which he has worked.

10. BOARD AND LODGING

- (a) The amount that may be deducted from the wages herein prescribed for board and/or lodging shall be \$30.00 per week and the amount that may be deducted where meals only are provided shall be \$4.00 per week.
- (b) School Service Employees shall be provided with free board and lodging if required by the employer to live on the premises during each weekly rostered period.

11. BREAKAGES

An employer shall not charge a sum of money against or deduct from the wages of an employee in respect of breakages of crockery or other utensils except in the case of misconduct.

12. BROKEN SHIFTS

- (a) Where in a day, a shift is worked in 2 periods, a premium of 15 per cent shall be paid, together with an excess fares allowance of \$2.50.

PROVIDED that the period of a meal break as prescribed in Clause 22 - Meal and Meal Allowance hereof shall be deemed to be a continuation of a shift.

- (b) In no circumstances shall an employee be required to work a shift in more than 2 periods.

13. CARER'S LEAVE

- (a) Paid Carer's Leave

- (i) In accordance with this subclause, 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 35 - Sick Leave of the 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, 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 entitlement 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.
- (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.

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(b) Unpaid Carer's Leave

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.

(c) Grievance Process

Any dispute or claim arising out of carer's leave provisions of the award shall be dealt with in the following manner:

- (i) the matter shall first be discussed between the employee and the employee's immediate supervisor;
- (ii) if not settled the matter shall be discussed between the employee's workplace delegate or representative and the immediate supervisor and the relevant manager with the authority to approve leave;
- (iii) if not settled the employee may refer the matter to the relevant union official to enable discussions between the appropriate union representatives and management representatives to occur;
- (iv) if not settled the matter may be submitted to the Tasmanian Industrial Commission for determination.

14. CASUAL EMPLOYEES

- (a) The minimum rates of wages that shall be paid to a casual school services employee as defined in Clause 7 - Definitions, shall be one thirty-eighth of the weekly rates prescribed for the work which the employee performs plus 33 1/3 per cent; such additional amount is in lieu of annual leave, sick leave and public holidays.
- (b) The minimum rates of wages that shall be paid to a casual administrative or classroom/curriculum employee (as defined in Clause 7 - Definitions), shall be one thirty-eighth of the weekly rates prescribed for the work which the employee performs plus 20%; such additional amount is in lieu of annual leave, sick leave and public holidays.
- (c) The minimum number of hours which a casual employee may be engaged shall be 2 per day.

PROVIDED that in exceptional circumstances the employer may, with the agreement in writing of the relevant union, engage an employee for a lesser number of hours than the 2 hours prescribed herein.

15. COMPASSIONATE LEAVE

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An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild be entitled upon applications 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 3 ordinary days.

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

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

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

16. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be negotiated between the parties.
- (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 this award.
 - (iii) The relevant union or unions shall be advised by the employer of his or her intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union or unions must be a party to the agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:
 - (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.

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- (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) An agreement shall be referred to the Tasmanian Industrial Commission.

17. EXEMPTIONS

The provisions of Clause 20 - Hours, Clause 24 Overtime and Clause 31 - Saturday, Sunday and Holiday Work of this award, shall not apply to Senior Matron, Matrons, Assistant Matrons, Housekeepers, Assistant Housekeepers who receive their full rate of pay during term vacations.

PROVIDED that this clause shall also apply to Chief Cooks subject to agreement being reached between the employer, employee and the Union concerned.

18. FIRST AID

- (a) The employer shall provide and maintain (to the satisfaction of the Secretary for Labour) a suitable first-aid outfit.
- (b) Where an employee is a qualified first aid attendant and is authorised to carry out the duties of a qualified first aid attendant, he shall be paid an additional amount of \$7.00 per week."

19. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:- New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (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 employee concerned, when, if it were not for such holiday, he had been at work.
- (c) When a Rostered Day Off falls on a paid holiday as specified in subclause (a) of this clause then the paid holiday shall be observed on the next working day or on another day agreed upon between the employer and the employee.

20. HOURS

- (a) The ordinary hours of work shall be a maximum of 38 per week, to be worked in not more than 8 hours in any one day on 5 consecutive days. The spread of such ordinary hours shall extend from 6.30 am to 7.30 pm.

PROVIDED that where it is mutually agreed, the hours referred to need not be worked on consecutive days.

- (b) 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 the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off 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 relevant time and wages book, at each time this provision is used.

- (c) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) 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.

- (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 Rostered Days Off flexibility, 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 Rostered Days Off arrangements in the relevant time and wages book, at each time this provision is used.

21. IMPLEMENTATION OF 38-HOUR WEEK

- (a) Ordinary hours of work shall be an average of 38 per week as provided in Clause 20 - Hours.
- (b) Except as provided in subclauses (e), (f) and (g) of this clause, the method of implementation of the 38-hour week may be agreed to by any of the following:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one week day on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.
- (c) At each establishment, an assessment should be made as to which method of implementation best suits the establishment and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- (d) The employer and the majority of employees in the establishment or part thereof, may agree that the ordinary working hours are to exceed 8 hours on any day within the spread of hours as described in Clause 20 - Hours, thus enabling a week day off to be taken more frequently than would otherwise apply.
- (e) Circumstances may arise where different methods of implementation of a 38-hour week apply to various groups or sections of employees in the establishment concerned.

(f) Agreements reached on the method of implementation of the 38-hour week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and available for inspection in accordance with the provisions of the *Industrial Relations Act, 1984*.

(g) Substitute Days

(i) An employer, with the agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with subclauses (b) (iii) and (iv) of this clause for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the establishment in the event of an emergency situation.

(ii) An individual employee, with the agreement of his employer, may substitute the day the employee is to take off for another day.

(h) Accumulation of Rostered Days Off

Where an employer and employees agree, rostered days off may accumulate to a maximum of 10 days which shall be taken at a mutually agreed time.

(i) Sickness on Day Off

Where an employee is sick or injured on the week day he is to take off in accordance with subclauses (b) (iii) or (iv) of this clause, the employee shall not be entitled to sick pay nor will the sick pay entitlement be reduced as a result of the employee's sickness or injury that day.

(j) Averaging of Payment

Where the method of implementation adopted is in accordance with subclauses (b) (iii) of this clause, the wages paid each week for ordinary hours shall be paid so that in each week when 40 hours is worked 2 hours pay shall be kept in hand and paid to the employee in the pay week that rostered day off occurs to enable an averaging of payments for ordinary time to occur.

(k) Work on a Rostered Day Off

Where an employee works on a rostered day off arising under subclauses (b) (iii) and (iv) of this clause, not being a day the subject of an agreement pursuant to subclause (h) of this clause, that day shall be deemed to be overtime and paid in accordance with Clause 24 - Overtime.

22. MEAL AND MEAL ALLOWANCE

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- (a) A meal interval of not less than 30 minutes or more than one hour shall be allowed to an employee within 5 hours of commencing work on that day.
- (b) An employee who is required to work overtime for more than two hours after the usual time of ceasing work shall be provided with a meal by the employer or in lieu thereof shall be paid a meal allowance of \$11.90.

23. MIXED FUNCTIONS

An employee engaged for more than 3 hours in any one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for the whole of such day.

24. OVERTIME

- (a) For all time of duty before the time fixed for commencing work or after the time fixed for ceasing work or in excess of 8 hours in any day (subject to Clause 20 - Hours or Clause 21 - Implementation of 38 Hour Week) payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) In computing overtime each day's work shall stand alone.
- (c) Work required to be performed by day workers up to 2 hours before the time fixed for commencing work shall be paid for at overtime rates but shall be deemed for the purpose of Clause 20 - Hours to be part of the employees ordinary hours of work.
- (d) Time off in lieu of payment for overtime may be taken by an employee. The amount of time off shall be calculated on the basis of the appropriate overtime rate. This alternative to the payment of penalty rates shall only apply by agreement between the employer and the employee concerned.
- (e) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken with four weeks of accrual.

25. 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.

PART A - MATERNITY LEAVE

- (a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

'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.

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

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

'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.

(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).
- (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.
 - (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 4 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.
- (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 (4) 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.
- (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:

'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).

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

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

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

'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.

(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;
- (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.

(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.

(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:

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

'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 stepchild 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.

'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).

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

'Spouse' includes a de facto spouse.

'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.

(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.

(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.
 - (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.

(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.
- (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:

'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.

'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.

'Spouse' includes a de facto spouse.

'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.

'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.

(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.
- (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.

(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.

(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 for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

26. PART-TIME EMPLOYEES

- (a) The minimum rates of wages that shall be paid to a part-time school services employee as defined in Clause 7 - Definitions hereof, shall be one thirty-eighth of the weekly rates prescribed for the work that the employee performs plus a loading of 10 per cent.
- (b) The minimum rates of wages that shall be paid to a part-time administrative or classroom/curriculum employee (as defined in Clause 7 - Definitions hereof) shall be one thirty-eighth of the weekly rates prescribed for the work that the employee performs.
- (c) The minimum number of hours which a part-time employee may be engaged shall be 2 per day.

27. PAYMENT OF WAGES

- (a) The employer shall specify a time and a place at which wages and other moneys are to be paid to the employees other than employees engaged for less than one week. The time so specified shall not be more than 48 hours from the time when such wages become due and shall not be later than Thursday in the week.
- (b) Payment may be made weekly or fortnightly and shall be in cash or by cheque or by Electronic Funds Transfer to an account nominated by the employee. The frequency and method of payment shall be the result of agreement being reached between the employer and the majority of employees concerned.
- (c) Where a cheque is not met upon presentation or a bank deposit is not made at the time specified or payment is not made at the time specified, otherwise than in circumstances beyond the control of the employer, the employee shall be deemed to be working during the time the employee is kept waiting.
- (d) Employees shall be given written details of all moneys due to him or her not later than Thursday in each pay week.

28. REST PERIODS

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Employees shall be allowed a rest period of 10 minutes duration to be taken during the first 4 hours of their working day, and a similar rest period to be taken during the second 4 hours of their working day.

29. RIGHT OF ENTRY

- (a) Subject to the requirements of Section 77 of the Act, an officer of the appropriate union accredited as hereinafter provided may, for the purpose of interviewing employees on legitimate union business, enter the employer's premises on production of his authority, at times which have been notified to the employer and which do not interfere with the normal work of the employee.
- (b) That if the employer alleges that a representative is unduly interfering with his work or is offensive in his methods, or is creating dissatisfaction amongst his employees, or is committing a breach of the previous conditions, the employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Secretary for Labour.
- (c) An officer shall be a duly accredited representative of an organisation if he be the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the signature of the holder. The certificate shall be in the following form or in a form not materially different therefrom:

[Name of Organisation]

This is to certify thatwhose signature appears hereunder, is a duly accredited representative of the abovenamed organisation for the purpose of the Independent Schools (Non-Teaching Staff) Award.

.....
Secretary
(Seal)

.....
Signature of holder of Certificate

[This certificate is strictly not transferable].

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30. ROSTERED DAYS OFF

Each employee shall have at least 2 consecutive days off in each week, other than rostered days off arising out of Clause 21 - Implementation of 38 Hour Week. The days off shall operate from the finishing time of work on the day immediately preceding the days off and until starting time on the day when work is to be resumed.

The days off shall be rostered and shall not be altered except by mutual agreement between the employer and the employee.

31. SATURDAY, SUNDAY AND HOLIDAY WORK

(a) Employees working on Saturdays, Sundays and Public Holidays shall be paid at the following rates:

Saturday work	time and one half
Sunday work	double time
Public holidays	double time and one half

PROVIDED that employees required to work on a Public Holiday may, where it is mutually agreed, be paid at the rate of time-and-one-half and in addition be granted an ordinary working day off in lieu of such public holiday, which shall be given and taken within one month of the holiday for which it was substituted. If the 'day off' is not given within the prescribed period, payment for the holiday worked shall be at the rate of double time and one half.

(b) Time off in lieu of payment of the penalty for working Saturday, Sunday or Public Holidays may be taken by an employee. The amount of time off shall be calculated on the basis of the appropriate penalty rate. This alternative to the payment of penalty rates shall only apply by agreement between the employer and the employee concerned.

32. SAVING

Any employee who, at the date of the making of this award, is in receipt of a wage in excess of that herein prescribed, shall not have his or her wages reduced as a result of this award.

33. SHIFT WORK

(a) Subject to the provisions of Clause 21 - Implementation of 38-Hour Week, shifts may be worked at such hours as may be agreed upon by the employer and employees concerned.

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- (b) For the purposes of this clause:
 - (i) 'Afternoon shift' means any shift finishing after 7.30 pm and at or before midnight.
 - (ii) 'Night Shift' means a shift finishing after midnight and at or before 8.00 am.
- (c) Shifts may be worked on any day of the week including Saturdays and Sundays, in such a manner that ensures the employee engaged on shift work shall have at least two consecutive days off duty in one week. These days shall be in addition to any time off arising out of the method of working the 38-hour week.
- (d) Employees engaged on afternoon or night shift on any day, Monday to Friday, shall be paid subject to the provisions of subclause (e) hereof, an allowance of 15% in addition to the appropriate classification rate provided for in Clause 8 - Wage Rates.
- (e) An employee who works on a permanent night shift being a night shift which does not alternate with another shift so as to give the employee at least one third of his/her working time off shift over a particular cycle shall receive a loading of 30% in addition to the classification rate prescribed in Clause 8 - Wage Rates.
- (f) The allowance prescribed by subclauses (d) and (e) hereof shall not apply where a shift worker works ordinary time on a Saturday, Sunday or public holiday where the appropriate penalty rate prescribed by this award shall apply.

34. SHOP STEWARD

An employee appointed steward or delegate in the establishment in which he or she is employed shall, upon notification thereof to the employer, be recognised as the accredited representative of the Union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees whom he or she represents.

35. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
 - (i) the employee shall not be entitled to such leave of absence for any period in respect of which an entitlement to workers' compensation exists;

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

Where such notification is not given, the employer shall be entitled to require as proof in accordance with paragraph (iii) of this subclause a certificate of a medical practitioner.

PROVIDED that where the employee genuinely is unable to give a notification prior to the commencement of the shift the requirements of paragraph (iii) of this subclause shall apply.

- (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that the employee was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

PROVIDED that two single days (excluding a working day before or a working day after a paid statutory holiday) may be allowed in each 12 months without the production of such proof;

- (iv) the employee shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
 - (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness or injury.

36. TERMS OF EMPLOYMENT

- (a) Except in the case of casuals as defined, employment under this award shall be by the week, and employment may be terminated only by the giving one week's notice by either party or by the payment or forfeiture of one week's wages, as the case may be; this shall not affect the right of an employer to dismiss an employee for misconduct warranting such dismissal.

PROVIDED that during the first two weeks of employment the employment may be terminated by the giving of one hours notice by either party or by the payment or forfeiture of one hours pay as the case may be.

- (b) Casual employees as defined shall be engaged by the hour, and subject to the provisions of Clause 14 - Casual Employees, subclause (b) hereof, employment may be terminated by one hour's notice being given by either party or by the payment or forfeiture of one hours pay as the case may be.
- (c) (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote deskilling.
- (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- (iii) Any direction issued by an employer pursuant to subclause (i) herein shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (d) At each establishment, the employer, the employees and the union may establish a consultative mechanism and procedures appropriate to the size, structure and needs of that establishment. Measures raised by the employer, employees or the union for consideration consistent with the objectives of the consultative approach shall be processed through that consultative mechanism and procedure.

37. UNIFORMS AND PROTECTIVE CLOTHING

- (a) Where uniforms, aprons or a type of dress are required by the employer to be worn, they shall be provided, laundered and maintained to the employer's expense.
- (b) In the case of employees required to use liquids or other materials that can prove injurious to the skin, they shall be supplied with rubber gloves.

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- (c) Where an employee is required to work in wet weather the employee shall be supplied by the employer with suitable wet weather clothing which clothing shall remain the property of the employer.
- (d) In the case of employees required to work in water they shall be supplied with gum boots.

R J Watling
COMMISSIONER

16 July 2002

(i)

APPENDIX TO THE INDEPENDENT SCHOOLS (NON TEACHING STAFF) AWARD

1. ARRANGEMENT

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2. DEFINITIONS

- (a) **'Tasplan'** means the Tasplan Fund established by Trust Deed and Articles on 24 March 1987.
- (b) **'Approved Fund'** means a superannuation fund which is established in accordance with the Operational Standards for Occupational Superannuation Schemes and has received preliminary listing from the office of the Occupational Superannuation Commissioner - Interim Group.
- (c) **'Union'** means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch or the Australian Municipal, Administrative, Clerical and Services Union .
- (d) **'Eligible Employee'** means a full-time, part-time or casual employee who is employed under a classification of the Independent Schools (Non-Teaching Staff) Award and who has completed one calendar months service with the employer.
- (e) **'Employer'** means an employer bound by the terms of the Independent Schools (Non Teaching Staff) Award.
- (f) **'Ordinary Time Earnings'** means the award classification rate, overaward payments and shift loadings (where relevant).

(ii)

3. FUND

- (a) For the purpose of this award contributions made by the employer in accordance with the provisions of Clause 5 - Employer Contributions, shall be paid to the Treasurer of Tasplan.
- (b) An employer bound by this Appendix shall become party to Tasplan upon the acceptance of the Trustees of that scheme, of an application to become a participating employer of Tasplan, duly signed and executed by that employer.

4. ELIGIBILITY FOR MEMBERSHIP

- (a) An employee shall become eligible for membership of the approved Superannuation Fund on the first entry date which occurs after the employee has completed one calendar months continuous service with the employer. The employee having completed the one months waiting period shall be eligible to have contributions paid to the Fund subject to Clause 5 - Employer Contributions, from the date of engagement with the employer.
- (b) An employee shall be enrolled in the approved Superannuation Fund upon the acceptance of the Administrator of the Fund of a membership application form and shall be deemed to be a member of the scheme from his or her entry date as prescribed in subclause (a) herein.
- (c) Notwithstanding the provisions contained in subclause (a) and (b) herein, an employee who is a member of an Approved Fund and was having contributions paid in accordance with this Appendix at his or her previous place of employment shall continue to have contributions paid on his or her behalf from the date of commencing employment with the current employer.

5. EMPLOYER CONTRIBUTIONS

- (a) Subject to the rules of the Fund, and subclause (c) herein, an employer shall contribute to the Fund in respect of each employee who is a member of the Fund an amount at the rate of three per cent of ordinary time earnings for each complete week employed. This calculation shall be based on the ordinary time worked by an employee in any week and shall exclude work performed and paid as overtime.
- (b) Subject to subclause (a) herein an eligible employee shall have a minimum contribution per week paid into the Fund of \$1.30.
- (c) Contributions shall be made for each calendar month an employee is a member of the scheme.

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(iii)

- (d) An employer shall not be required to contribute during any periods of unpaid leave. Furthermore, an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.
- (e) Pro rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.

6. EMPLOYEE CONTRIBUTIONS

Subject to the rules of the Fund, employees who may wish to make contributions to the Fund additional to those being paid pursuant to Clause 5 - Employer Contributions - herein, shall be so entitled. Such employees may either forward their own contribution directly to the Fund Administrators or, where it is practicable to do so, authorise the employer to pay into the Fund from the employees' wages, amounts specified by the employer subject to the amount of contribution being expressed in whole dollars and any adjustment to the level of contribution being subject to 3 months notice in writing from the employee to the employer or such lesser period as they may both otherwise agree.

7. CESSATION OF CONTRIBUTIONS

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

8. OPERATION

This Appendix shall operate from the beginning of the first full pay period to commence on or after 30 March 1989.

9. EXEMPTIONS

An employer set out hereunder, providing Superannuation under an Approved Fund to employees may elect not to join TASPLAN and shall be exempt from the provisions of Clause 3 - Fund.