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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application for award or award variation

Tasmanian Trades and Labor Council
(T.3077 of 1991)

PLANT NURSERIES AWARD

COMMISSIONER R J WATLING

9 December 1992

Award variation - insertion of "Parental Leave" clause in lieu of "Maternity Leave" clause

ORDER -

**No. 2 of 1992
(Consolidated)**

AMEND THE **PLANT NURSERIES AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEROF THE FOLLOWING:

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1. TITLE

This award shall be known as the "Plant Nurseries Award".

2. SCOPE

This award is established in respect of the Plant Nursery Industry; which, without limiting the generality of the foregoing shall include the growing of instant turf but excludes Floriculturists (as defined).

3. ARRANGEMNT

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4. DATE OF OPERATION

This award shall come into operation on and from 1 January 1993.

It is a term of this award (arising from the decision of the Tasmanian Industrial Commission in the State Wage Case of 13 August 1991) that the union undertakes, for the duration of the principles, not to pursue any claims, award or overaward, except where consistent with those principles.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes No. 1 of 1992 (Consolidated).

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

PROVIDED ALWAYS that where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee the wage rates so paid in excess of those herein prescribed shall not be reduced as a result of this award.

Nothing in this award shall be taken to reduce the conditions of an employee, who at the time of the making of this award, is in receipt of conditions in excess of those herein prescribed.

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a registered organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a registered organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Australian Workers' Union, Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:
 - (i) the Tasmanian Confederation of Industries.

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7. DEFINITIONS

'Casual employee' means a person who is engaged on an irregular basis to perform a specific task(s) over a defined time period.

At the completion of such period and or task(s) the contract of employment shall be deemed to be terminated.

'Floriculturist' means an employer whose business involves the growing of flowers through to bloom for the retail and or wholesale market.

'Full-time employee' means any person who is engaged on an ongoing fulltime basis on one of the work cycles described in Clause 19 - Hours and Days of Work, subclause (a).

'Nursery Assistant Level 1' - (% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment – 80%)

Nursery Assistant Level 1 means a person with less than 4 months experience (at the time of or prior to the making of this award) in the industry as specified in Clause 2 - Scope of this award who is capable of performing, under constant supervision some or all of the following:

- General labouring
- General cleaning
- Preparation of media
- Operating equipment (media mixer, small tractor)
- Assisting in loading and unloading of stock
- Potting and laying out of beds after potting
- Labelling
- Price marking
- Putting stock away
- Filling shelves or beds
- Limited plant maintenance including weeding, watering, thinning and transplanting.

Progression to Nursery Assistant Level 2 (as defined) will be automatic following four months experience in the industry as specified in Clause 2 - Scope of this award, prior to or following the making of this award.

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'Nursery Assistant Level 2' - (% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment – 84%)

Nursery Assistant Level 2 means a person with more than four months experience in the industry (at the time of or prior to the making of this award) as specified in Clause 2 - Scope of this award who is capable of performing, under limited supervision some or all of the functions of a Nursery Assistant Level 1 (as defined) and in addition may be required to perform some or all of the following:

- Small fork lift
- 34 - 50 H.P. tractors
- Potting machines
- Front end loader - up to 1M
- Spray equipment (motorised, tractor mounted or by hand)
- Deliveries (irregular)
- Brush cutters, mowers (hand held, ride on)
- Limited plant identification
- Basic sales and associated clerical duties
- Plant life maintenance including feeding
- Preparation of media for the growing of plants
- Spraying and or drenching
- Labelling
- Preparation of orders
- Plant life maintenance
- Assist in propagation

Progression to Plant Nursery Assistant Level 3 (as defined) will be by appointment or when an employee is capable of performing efficiently some or all of the tasks as prescribed for a Nursery Assistant Level 3 (as defined).

'Nursery Assistant' Level 3' - (% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment - 92%)

Nursery Assistant Level 3 means a person with at least 12 months experience in the industry as specified in Clause 2 - Scope of this award who is capable of performing efficiently with minimal supervision any of the tasks reasonably required of him/her, which may include some or all of the following:

- Propagator (as defined)
- Deliveries
- Handle customer queries
- Wholesale sales
- Limited supervision of other employees
- Assist with training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as. defined)

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'Nursery Assistant Level 4' - (% Wage relativity after minims rate adjustment - 100%)

Nursery Assistant Level 4 means a person who has successfully completed a recognised apprenticeship in a relevant trade. This shall not restrict the employer from classifying an employee at Level 4 if that employee has achieved a certain standard of knowledge and/or competence in the industry as specified in Clause 2 - Scope of this award; or

An employee who, in addition to performing some or all of the functions of Nursery Assistant Level 3 (as defined), accepts responsibility for supervision of employees and in addition is capable of performing some or all of the following functions:

- Advise of remedial treatment of diseases and pests in plants
- Training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as defined) and or Nursery Assistant Level 3 (as defined).

'Nursery Assistant Level 5' - (% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment - 108%)

Nursery Assistant Level 5 means an employee who, in addition to performing some or all of the functions of Nursery Assistant Level 3 (as defined) and/or Nursery Assistant Level 4 (as defined), accepts responsibility for acting in charge and in addition is capable of performing some or all of the following functions:

- Supervision of employees
- Training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as defined) and/or Nursery Assistant Level 3 (as defined)
- Sales and marketing
- Ordering of stock
- Quality control
- Engagement and termination of employees

'Part-time employee' means a person engaged to regularly work for less hours per day or per week than those hours prescribed in Clause 19 - Hours and Days of Work for a full-time employee (as defined).

'Plant Nursery' means where the principle business of the employer includes the preparation of growing media for the growing of plant material, the growing of plant material, presentation of plant material for sale, selling of plant material (which may include the selling of garden and or household accessories).

'Propagator' means a person who is capable of identifying when a plant is ready for propagation and, if required by his/her employer, is capable of performing propagation work or treatment of plant material and/or is capable of directing other employees to perform propagation work and/or treatment of plant material.

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'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, making a total of up to 11 paid holidays per year.

'Trainees' shall be persons meeting the eligibility criteria laid down for the purpose of the Australian Traineeship System (ATS) and who are bound by a training agreement.

'Traineeships' is a system of training under the ATS comprising structured on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training provider approved by the Training Authority of Tasmania.

'Training Agreement' means an agreement for training registered under the provisions of the Industrial and Commercial Training Act 1985 (Tasmania).

8. WAGE RATES

1. WAGE RATES

(a) Adult employees in a classification level hereunder mentioned shall be paid the base rate and supplementary payment appearing opposite that classification.

No.	Classification	Wage Relativity %	Base Rate \$	Supplementary Payment \$	Total Wage \$
1.	Nursery Assistant Level 1 (as defined)	80	292.20	20.80	313.00
2.	Nursery Assistant Level 2 (as defined)	84	306.80	21.80	328.60
3.	Nursery Assistant Level 3 (as defined)	92	336.00	23.90	359.90
4.	Nursery Assistant Level 4 (as defined)	100	365.20	26.00	391.20
5.	Nursery Assistant Level 5 (as defined)	108	394.40	28.00	422.40

(b) Supplementary Payment

The amount appearing in the column headed Supplementary Payment in this clause is to be absorbed against any overaward payment being paid by an employer as from the beginning of the first full pay period on or after 30 July 1992.

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(c) Translation Schedule

- | | | | |
|----|--|---|---|
| 1. | An employee having less than one months continuous service with their present employer. | - | Nursery Assistant Level 1
(as defined) |
| 2. | An employee who without direct supervision, carries out any duties required in connection with the growing of seeds and/or plants. | - | Nursery Assistant Level 2
(as defined) |
| 3. | Propagator | - | Nursery Assistant Level 3
as defined) |
| 4. | Horticultural Tradesman
as defined) | - | Nursery Assistant Level 4
(as defined) |

2. APPRENTICES

The minimum rates of wages that may be paid to apprentices shall be the undermentioned percentage of the total wage payable to Nursery Assistant Level 4 (as defined).

	%	Amount per week \$
1st year	42	164.30
2nd year	55	215.20
3rd year	75	293.40
4th year	88	344.30

3. JUNIOR EMPLOYEES

The minimum rate of wages that may be paid to unapprenticed junior employees shall be the undermentioned percentage of the total wage for the classification Nursery Assistant - Level 1 (as defined).

	%	Amount per week \$
Under 16 years of age	50	156.50
16 to 17 years of age	65	203.50
17 to 18 years of age	75	234.80
18 to 19 years of age	90	281.70
19 to 20 years of age	95	297.35
20 years of age and over	100	313.00

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9. ALLOWANCES

(a) Tool Allowance

All employees engaged in work that is normally undertaken as part of a trade under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.80 per week.

PROVIDED that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work for overtime or for any other purpose.

(b) Meal Allowance

An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$4.90.

(c) Travelling Time Allowance

An employee who on any day or from day to day is required to work away from the usual workplace shall, at the direction of the employer, present for work at such workplace at the usual starting time; but all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent travelling to and from the usual workplace) shall be paid travelling time payment at ordinary rates of pay.

(d) Kilometrage Allowance

Where an employee is required by the employer to use his/her own motor vehicle for the purpose of the employer's business, then the employee will be paid 31 cents per kilometre travelled.

(e) First Aid Allowance

The employer shall provide and maintain, in accordance with the Industrial Health and Safety Act (1977) and Regulations (1979) a first aid outfit including an affixed list of current employees holding a first aid certificate.

A full-time employee (as defined) holding first aid qualifications from the Red Cross Society, St John Ambulance or similar body and appointed by the employer to perform first aid duty shall receive in addition to his/her wages an allowance of \$1.65 per day.

(f) Special Rates

Employees who are engaged in spraying or handling of chemicals shall be provided, by the employer, with protective clothing and be paid 39 cents per hour extra while so engaged with a minimum payment as for four hours on any one day.

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10. AMENITIES

- (a) The employer shall where practical provide for the use of employees, suitable washing facilities, change rooms, dining accommodation and sanitary conveniences in accordance with The Industrial Safety Health and Welfare Regulations 1979.
- (b) Remote Work

An employee required to work at a location remote from the usual workplace which does not reasonably enable the employee to return to the employee's usual place of residence each evening shall be supplied free of cost suitable accommodation which shall be clean and in good repair and include hot and cold water.

That accommodation will, on the instruction of the employer, be vacated within 48 hours in the same condition as when occupied.

11. ANNUAL LEAVE

- (a) Period of Leave

A period of 28 consecutive days shall be allowed annually to an employee (other than a casual employee (as defined)) after 12 months continuous service (less the period of annual leave).

- (b) Annual Leave Exclusive of Public Holidays

- (i) Should any of the holidays mentioned in Clause 18 – Holidays with Pay of this award, fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such day so falling.

- (ii) Subject to subclause (i) hereof where an employee fails without reasonable cause, proof of whereof shall be upon him to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

- (c) Time of Taking Leave

The annual leave provided by this clause shall be allowed and shall be taken within 3 months of such leave falling due, at a time or times mutually agreed between the employer and employee.

PROVIDED that in the event agreement cannot be reached the employer shall give not less than four weeks notice to the employee concerned of their intention to grant such leave.

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(d) Payment in Lieu Prohibited

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

(e) Proportionate Leave on Termination of Service

If, after one month's service in any 12 monthly period, an employee lawfully leaves their employment, or the employment is terminated by the employer through no fault of the employee, the employee shall be paid at the rate of 3.076 hours per completed week of continuous service.

(f) Payment for Period of Leave

(i) All employees before going on leave shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave for the relevant period.

(ii) In addition thereto, all employees other than casual employees (as defined), before going on annual leave shall be paid a loading of 17.5% on payments made for annual leave.

(g) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in any combination provided one period shall be not less than seven consecutive days, i.e. five working days.

(h) Calculation of Continuous Service

For the purposes of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident.

In calculating the period of 12 months continuous service any such absence as aforesaid shall not, except to the extent of not more than 91 days in any 12 monthly period, be taken into account in calculating the period of 12 months continuous service.

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12. COMPASSIONATE LEAVE

An employee, other than a casual employee (as defined) or a part-time employee (as defined) subject to the provisions of Clause 14 - Contract of Employment subclause (i) and/or (ii) shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days, provided that no payment shall be made in respect of an employee's rostered day 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.

13. CONSULTATIVE PROCEDURE

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer and the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.

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- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
 - (i) developing a more highly skilled workforce;
 - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (iii) removing barriers to the utilisation of skills acquired.

14. CONTRACT OF EMPLOYMENT

- (a) General
 - (i) Upon commencing work with an employer, all employees shall be classified at a level prescribed in Clause 8 - Wage Rates of this award.
 - (ii) Further, all employees prior to the commencement of duties shall be provided with advice in writing, of the classification level to which they have been appointed, upon which they shall remain and be paid the wage rate thereof until reclassified. Further advice in writing will be issued by the employer if an employee is reclassified.

An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

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

- (b) Full-time Employees (as defined)

Full-time employees (as defined) shall be engaged by the week.

- (c) Part-time Employees (as defined)

- (i) Part-time employee (as defined) engaged to work less than 15 hours per week shall be paid, per hour, one fortieth of the appropriate classification rate prescribed in Clause 8 - Wage Rates of this award.

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In addition thereto such employee shall receive 201 of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

- (ii) Part-time employees (as defined) engaged to work 15 or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in Clause 11 - Annual Leave, Clause 18 - Holidays with Pay and Clause 27 - Sick Leave, provided that payment therefore shall be made at the rate normally paid to such employees for a similar period of time worked. The wage rates payable per hour shall be one-fortieth of the appropriate classification rate prescribed in Clause 8 - Wage Rates.

PROVIDED that by agreement between the employer and the employee affected payment in lieu of the abovementioned entitlements may be made in the manner prescribed in subclause (i) of this clause.

- (iii) A part-time employee (as defined) shall have only one engagement consisting of consecutive hours per day with any one employer.
- (iv) No part-time employee (as defined) shall be employed for less than four hours for work performed on any given day within the span of ordinary hours prescribed in Clause 19 Hours and Days of Work.
- (v) For a part-time employee (as defined) written advice as prescribed in subclause (a) (ii) of this clause shall in addition clearly state that the employee is engaged as a part-time employee (as defined).

(d) Casual Employees (as defined)

- (i) For a casual employee (as defined) written advice as prescribed in subclause (a) (ii) of this clause shall in addition clearly state that the employee is engaged as a casual employee (as defined).
- (ii) The employer shall, at the time of engagement, advise the employee, to the best of the employer's ability, of the period over which they expect to be able to offer ongoing availability of work on an irregular basis and shall regularly review and update this position with the employee as changes occur.
- (iii) Where it is the intention of the employer not to re-engage the employee referred to in subclause (d) (ii) hereof when work becomes available, the employer shall notify the employee in writing of such intention as soon as the decision is made.
- (iv) Casual employees (as defined) shall be engaged for a minimum of four hours per engagement.

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- (v) A casual employee (as defined) for working ordinary time shall be paid per hour one fortieth of the weekly rate prescribed for a full-time employee (as defined) engaged at the equivalent classification level for the work performed, plus 20%. Such additional amount to be payable in lieu of annual leave, sick leave and public holidays.
 - (vi) If a casual employee (as defined) is not informed before leaving the job at the end of a days work that that employee is not required to work on the next day, and such employee attends work and does not commence work on that day, the employee shall be paid a minimum of four hours pay at the appropriate classification rate.
- (e) Termination of Employment
- (i) Employment for a full-time employee (as defined) or part-time employee (as defined) may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
 - (ii) For the purpose of this clause, termination of employment shall include termination with or without notice.
 - (iii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for wilful misconduct or neglect of duty.

15. ENTERPRISE FLEXIBILITY

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

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- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union, 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.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

16. FIRST AID

The employer shall provide and maintain, in accordance with the Industrial Health and Safety Act (1977) and Regulations (1979), a first aid outfit in each establishment.

17. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENT

- (a) Holidays
 - (i) Subject to the provisions of Clause 18 - Holidays with Pay, subclause (d) all employees who perform work on a holiday as prescribed in Clause 18 - Holidays with Pay shall be paid at the rate of double time and one half.
 - (ii) Subject to the provisions of subclause (a) (i) herein all employees who are required to work on any of the days prescribed in Clause 18 - Holidays with Pay shall be paid for a minimum of four hours.
- (b) Overtime - Full-time Employees (as defined) or Part-time Employees (as defined)
 - (i) Overtime for a full-time employee (as defined) or part-time employee (as defined) shall be paid when the employee is required by the employer to work:
 - (1) in excess of the number of hours specified in Clause 19 - Hours and Days of Work,
 - (2) outside the span of hours specified in Clause 19 Hours and Days of Work,
 - (3) in excess of 8 hours unless there is agreement between the employer and the employee as prescribed in Clause 19 - Hours and Days of Work, subclause (a).

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Overtime payment shall be at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.

- (ii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
 - (iii) A full-time employee (as defined) shall work a reasonable amount of overtime as directed by the employer.
- (c) Saturday and Sunday Payment for full-time employees (as defined) or part-time employees (as defined)
- (i) For work performed on a Saturday payment shall be made at the rate of ordinary time and one quarter.
 - (ii) For work performed on Sunday payment shall be made at the rate of ordinary time and one half.
- (d) Overtime, Saturday and Sunday Payment for Casual Employees (as defined)
- (i) For work performed on a Saturday payment shall be made at the rate or ordinary time and one half for the first two hours and double ordinary time thereafter.
 - (ii) For work performed on a Sunday payment shall be made at the rate of double ordinary time.
 - (iii) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Clause 19 Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first two hours and double time thereafter.
- (e) Call Back

An employee recalled to work overtime after leaving his employers business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours work at the appropriate rate for the first time he/she is so recalled and a minimum of two hours for each subsequent recall; provided that the employee shall not be required to work the full period if the job he/she is recalled to perform is completed within a shorter period.

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18. HOLIDAYS WITH PAY

- (a) All employees (other than casual employees (as defined)) or a part-time employee subject to the provisions of Clause 14 - Contract of Employment, subclause (i) and or (ii) shall be allowed the following days as paid holidays:

Christmas Day, Boxing Day, 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) and Recreation Day (where Hobart Regatta Day is not observed.

By agreement between any employer and an employee, other days may be substituted for the said days or any one of them.

- (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, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed in Clause 17 - Holiday, Saturday, Sunday and Overtime Payment contained in this award.

19. HOURS AND DAYS OF WORK

- (a) (i) The ordinary hours of work for a full-time employee (as defined) shall be 40 hours per week and shall not exceed eight consecutive hours on any day within the span of hours of 6 a.m. to 6 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.
- (ii) The ordinary hours of work for a part-time employee (as defined) shall be less than 40 hours per week and shall not exceed eight consecutive hours on any day within the span of hours of 6 a.m. to 6 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

PROVIDED that where there is agreement between the employer and an employee, the ordinary hours of work may be extended from eight up to ten hours on any day.

- (iii) By agreement between the employer and the majority of employees affected the ordinary hours of work for a fulltime employee (as defined) shall be an average of 40 hours per week provided that they not work in excess of eight consecutive hours on any day within the span of hours of 6.00 a.m. and 6.00 p.m. and shall be worked on one of the following basis:

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- (1) 40 hours within a work cycle not exceeding five days in seven consecutive days; or
- (2) 80 hours within a work cycle not exceeding ten days in fourteen consecutive days; or
- (3) 120 hours within a work cycle not exceeding fifteen days in twenty-one consecutive days; or
- (4) 160 hours within a work cycle not exceeding twenty days in twenty-eight consecutive days.

PROVIDED that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from eight (8) up to ten (10) hours on any day.

(b) The ordinary hours of work for a casual employee (as defined) shall not exceed eight on any day and shall be worked consecutively within the span of hours of 6 a.m. - 6 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

(c) Meal Break

An unpaid meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.

An employee required to continue beyond 5 hours without such an interval shall be paid at overtime rates until such time as the meal break is taken.

(d) Rest Period

Employees shall be allowed a paid rest period of 10 minutes each day.

20. MIXED FUNCTIONS

An employee engaged for more than 2 hours in the aggregate on any one day performing duties carrying a higher rate than their ordinary classification shall be paid the higher rate for such day.

If so engaged for two hours or less in the aggregate during any one day the employee shall be paid the higher classification rate only for the time so worked.

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21. 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.

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(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.

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(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 four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

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- (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.

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

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

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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.

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

(d) Certification

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

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

(e) Notice Requirements

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

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(f) Variation of Period of Paternity Leave

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

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(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.

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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;

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- (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.

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- (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.

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- (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.

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- (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.

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'**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.

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(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.

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- (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

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(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.

22. PAYMENT OF WAGES

(a) For all employees payment of wages shall be made, on a nominated day weekly or fortnightly or, by agreement between the employer and the employee affected, monthly.

(b) Wages shall be paid by cash, cheque or electronic fund transfer.

PROVIDED that where wages are paid by electronic fund transfer the employer shall meet the cost of the deposit transaction.

PROVIDED FURTHER that for employees engaged on or before 29 July 1992 payment by electronic fund transfer shall be by agreement between the employer and the employee.

(c) An employee who is kept waiting for his/her pay longer than 15 minutes after the cessation of work on pay day shall be paid at ordinary time work rates for all time he/she is so kept waiting for his/her pay. However, where circumstances causing the delay in payment in wages are beyond the control of the employer no such payment shall be made.

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23. PREFERENCE OF EMPLOYMENT

- (a) Preference of employment in respect to employees who are subject to this award shall, subject to anything contained elsewhere in this award, be given equally to persons who are adequately experienced and otherwise competent and who are either:
 - (i) members of the Australian Workers' Union, Tasmania Branch; or
 - (ii) persons who are prepared to make application to become a member of the Australian Workers' Union, Tasmania Branch.
- (b) If more than one person described in subclause (a) (i) and (ii) of this clause make application for the employment, then the employer shall have absolute discretion to select any one or more such persons.
- (c) Owners of the business or their spouse shall not be subject to the provisions of this clause.
- (d) Nothing in this clause shall be read as to disadvantage a Conscientious Objector holding a certificate under Section 32(9) of the industrial Relations Act, 1984.

24. PROTECTIVE CLOTHING

- (a) If an employee is required to work in sloppy or muddy conditions, water or wet under foot or in heavy rain he/she shall be provided with wet weather gear and suitable head covering, so as to protect him/her from getting wet.
- (b) The employer shall supply to each employee on engagement one pair of protective footwear, and two pairs of overalls (or by agreement between the employer and the employee affected equivalent to two pairs of overalls) and thereafter replacement of clothing and protective footwear shall be on a fair wear and tear basis upon production of the unserviceable item.
- (c) All other protective clothing or equipment issued must be returned clean and in good order, fair wear and tear excepted, to the employer, on completion of the job.

25. RESOLUTION OF DISPUTES

Any industrial dispute arising during the currency shall be dealt with as follows:

- (a) the matter should first be discussed between the employee and his/her immediate supervisor. At the employee's option the union delegate may also be present;
- (b) if not settled, the matter shall be submitted by the shop steward union representative to the industrial officer or other appropriate officer of the employer;

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- (c) if not settled, the matter shall be formally submitted by the Branch Secretary or other appropriate official of the union concerned to the employer;
- (d) if not settled, the matter shall be submitted to the Tasmanian Industrial Commission for determination;
- (e) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, and officials of the unions and their members, will take all possible action to settle any dispute within seven (7) days of notification of the dispute to the employer;
- (f) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

26. RIGHT OF ENTRY

- (a) For the purposes of interviewing employees on legitimate union business a duly accredited representative of the Australian Workers' Union, Tasmania Branch may enter the employer's premises during recognised meal or rest breaks of employees on the following conditions:
 - (i) that the duly accredited representative advise the employer prior to entering the premises;
 - (ii) that the duly accredited representative interview employees only at recognised places for taking meal or rest breaks;
 - (iii) that no one representative visits the premises more than once in each week without the agreement of the employer.
 - (iv) that if the employer alleges that a duly accredited representative is unduly interfering with his/her work or is creating dissatisfaction amongst employees or is offensive in his/her methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.
- (b) For the purpose of inspecting records in accordance with section 77(2) of the Industrial Relations Act 1984, a duly accredited representative of the Australian Workers' Union, Tasmania Branch may enter the employer's premises at a mutually agreeable time.

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27. SICK LEAVE

- (a) An employee, other than one engaged as a casual employee (as defined), or a part-time employee (as defined) subject to the provisions of Clause 14 - Contract of Employment , subclause (i) and/or (ii) 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) an employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
 - (ii) the employee shall, wherever possible, inform the employer of his/her inability to attend for work prior to the commencement of such absence;
 - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (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 (2) weeks of ordinary working time.
- PROVIDED** that during the first three months of employment, sick leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer.
- (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/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

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28. SUPERANNUATION

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into TASPLAN (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 30 July 1992.
- (ii) Contributions to the fund shall be made by the employer on at least a . calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
- (iii) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (iv) Where an eligible employee (as defined) has completed 38 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(b) Casual Employees

Contributions shall be made in respect to a casual employee (as defined) where that employee works at least 20 hours over a fund billing statement month.

(c) Definitions

'Approved Fund' shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'Eligible Employee' means an employee for whom a classification appears- in this award whether employed on a full-time, part-time or casual basis.

'Ordinary Time Earnings' shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

'TASPLAN' shall mean an approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

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(d) 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.

(e) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN (as defined) in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 1 January 1992 and occupational superannuation contributions equivalent to 31 of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 1 January 1992 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than either of the nominated approved funds.

(f) Procedure for Seeking Exemption

- (i) An employer seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 30 October 1992 for hearing and determination.

Such application shall contain the following information:

- (a) Name of Fund into which the funds are to be paid.
- (b) Evidence of the funds compliance with Commonwealth Operational Standards.
- (c) Summary of Structure and Benefits.
- (d) Level of Administration Charge.
- (e) What date the initial contribution was paid.
- (f) Any other relevant information.

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- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union agrees with the application, the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 30 July 1992 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 30 July 1992.

29. TIME AND WAGES BOOK

Each employer shall keep a time and wages book in accordance with the Industrial Relations Act 1984 and Regulations.

30. TRAINEE - NURSERY ASSISTANT

- (a) A Trainee (as defined) shall attend an approved on and off-the-job training course or programme prescribed in the relevant training agreement (as defined) or as notified to the trainee by the Training Authority of Tasmania.
- (b) Trainees may be engaged by employers registered with the Training Authority of Tasmania. The employer shall ensure that the trainee is permitted to attend the prescribed off-the-job training course and is provided with on-the-job training approved by the Training Authority of Tasmania.
- (c) The employer shall provide a level of supervision in accordance with the approved training plan during the traineeship period.
- (d) The employer agrees that the implementation of the training plan will be monitored by officers of the Training Authority of Tasmania and that training records or work books may be utilised as part of this monitoring process.
- (e) All other terms and conditions of this award shall apply unless specifically varied by this clause.
- (f) The trainee shall be engaged for a period of twelve months as a full-time employee provided that the trainee shall be subject to a satisfactory probation period of up to one month.

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- (g) The trainee is permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the Training Agreement (as defined).
- (h) It is acknowledged that service as a trainee is to be counted as service for all purposes of determining long service leave entitlements provided it is continuous with further service. However, it is agreed that service as a trainee shall also be counted if the trainee is appointed to a position by the employer within three months of the termination of the traineeship.
- (i) Under normal circumstances overtime and shift work shall not be undertaken by trainees.

If during the traineeship period it is necessary because of the nature of the work and training experience then such shift/overtime work may be worked by the trainees.

Where overtime or shift work is undertaken by the trainee the appropriate award conditions shall apply based on the rate for the trainee classification.

- (j) As the Australian Traineeship System is a system of vocational training providing work based training, focusing on developing practical competence, trainees shall be exempt from action with respect to industrial disputes.
- (k) Wherever possible traineeship positions shall be additional to existing staff numbers. Existing full-time employees shall not be displaced from employment by the trainee.
- (l) The union shall be afforded reasonable access to the trainees for the purpose of explaining the role and function of the union.
- (m) This clause represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.
- (n) The weekly wages payable to trainees shall be determined by multiplying the appropriate junior rate as specified in Clause 8 Wage Rates, subclause 3 - Junior Employees of this award by 39 (which represents the actual time spent on the job) and dividing that sum by 52.

The wage rates determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines. This figure is adjusted in accordance with National Wage Decisions.

R J Watling
COMMISSIONER

9 December 1992