

TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T13142 of 2008)
Private Sector Awards

Minister administering the *State Service Act 2000*
(T13143 of 2008)
Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2008 – applications to vary private and public sector awards – Private Sector Awards – Public Sector Awards, other than named awards - award wage rates to be increased by \$19.00 per week - wage related allowances to be increased by 3.1% – meal allowance increased to \$14.60 - State Minimum Wage rate determined at \$546.10 - s.35(1)(b) – operative date ffpp 1 August 2008

ORDER BY CONSENT

ICE CREAM MAKERS AWARD

**No. 1 of 2008
(Consolidated)**

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

1. TITLE

This award shall be known as the "Ice Cream Makers Award".

2. SCOPE

This award is established in respect of a manufacturer of ice cream or ice confectionery and incidental thereto the manufacture of pastry and pastry products.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2008.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Ice Cream Makers Award No 1 of 2007 (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.

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: -

the Liquor, Hospitality and Miscellaneous Union, 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

For the purposes of this award:

General:

'Part-time employee' - means a permanent employee engaged for a constant number of hours per week less than the number prescribed in Clause 16 - Hours of Work - Day Workers. Except as otherwise mutually agreed, an employee shall be paid for each week that the employee is ready, willing and available to work during the hours prescribed.

'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.

Classifications:

Level One (Relativity 82%)

Entry Criteria

An employee who has proven and demonstrated skills to perform at this level or has completed to the employer's satisfaction, appropriate training but may include an employee without previous experience in the industry.

Induction Training

New employees at this level shall undertake an induction training programme covering areas such as conditions of employment, introduction of supervisors and fellow workers, training and career paths, plant layout, work procedures, occupational health and safety, quality control and product/plant/personal hygiene.

General

An employee at this level shall:

- (a) understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults;
- (b) be responsible for the quality of their own work;
- (c) understand basic process control procedures;
- (d) work in a team environment and/or under routine supervision;
- (e) undertake work in a safe and responsible manner;
- (f) exercise discretion with the employee's level of skill and training;
- (g) possess basic interpersonal and communication skills.

Indicative Skills/Duties

Indicative of the tasks that the employee may perform at this level are:

- (a) general labouring and cleaning duties;

- (b) grounds keeping/yard duties;
- (c) packing;
- (d) checking;
- (e) completion of relevant records and paperwork;
- (f) freezerhand as a trainee under supervision;

Promotional Criteria

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable them to progress to the next level as a position becomes available.

Level Two (Relativity 87.4%)

Entry Criteria

An employee who has completed to the satisfaction of the employer, appropriate training and/or has proven and demonstrated skills to perform work at this level.

General

An employee at this level shall:

- (a) be able to work from simple instructions and procedures;
- (b) work under routine supervision either individually or in a team environment;
- (c) be responsible for the quality of the employee's own work subject to routine supervision;
- (d) be able to operate between different work stations;
- (e) undertake work in a safe and responsible manner;
- (f) exercise discretion within the employee's level of skills and training;
- (g) possess basic interpersonal and communication skills.

Indicative Skills/Tasks

In addition to the tasks/duties of a level one employee the indicative tasks that the employee may perform at this level are:

- (a) assembling machinery under direction;

- (b) operation of one or more pieces of equipment in the production process;
- (c) receiving, despatching, distributing, sorting, documenting and recording of goods and materials in accordance with appropriate procedures;
- (d) basic inventory control in the context of the production process;
- (e) assist in the operation of all mixing equipment;
- (f) assist in the production of pastry products;
- (g) colouring and flavouring of products;
- (h) operation of forklift equipment under general supervision;
- (i) wrapping;
- (j) handling, packing and unpacking and other related duties in a cold room or warehouse;
- (k) inspecting products and materials for conformity with established operational standards;
- (l) may assist employees at level three;
- (m) may assist in the provision of on-the-job training in conjunction with supervisors/trainers.

Promotional Criteria

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable them to progress to the next level as a position becomes available.

Level Three (Relativity 92.4%)

Entry Criteria

An employee who has completed to the satisfaction of the employer, appropriate training and/or has proven and demonstrated skills to perform work at this level.

General

An employee at this level shall:

- (a) be able to work from complex instructions and procedures;
- (b) have sound communication and interpersonal skills;

- (c) be responsible for machine set up and operation of own work station/area and quality of their own work and understands and applies quality control techniques;
- (d) be able to coordinate the work of other employees;
- (e) have working knowledge of all related operations, processes and materials;
- (f) be able to perform work with minimal supervision;
- (g) have a sound knowledge of the employer's operations;
- (h) exercise discretion within the scope of this level.

Indicative Skills/Tasks

In addition to the tasks/duties of a Level two employee the indicative tasks the employee may perform at this level are:

- (a) work from production plans and schedules;
- (b) operate set up and adjust all production machinery;
- (c) routine and general machine maintenance;
- (d) inventory and store control;
- (e) operation of all pieces of equipment in the production process;
- (f) responsible for and supervision of the work of other employees;
- (g) conduct analysis and testing procedures and be responsible for this process;
- (h) operate all manual handling equipment such as a forklift, without supervision;
- (i) production of pastry products supervising other employees in this process;
- (j) conduct a range of test procedures in all fields of testing under prescribed guidelines and produce reliable and accurate results;
- (k) assist in the provision of on-the-job training.

Promotional Criteria

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of the next level so as to enable them to progress to the next level as a position becomes available.

Level Four (Relativity 100%)

Entry Criteria

An employee who has successfully completed a recognised trade course and is an accredited tradesperson or has successfully completed certified training and/or has demonstrated skills to the satisfaction of the employer to perform duties at this level.

General

An employee at this level shall:

- (a) understand and accept total responsibility for a number of work stations and/or sections of the plant;
- (b) implement quality control techniques and procedures;
- (c) have a highly developed level of interpersonal and communication skills;
- (d) be able to supervise and provide guidance to other employees;
- (e) exercises discretion within the scope of this level.

Indicative Skills/Tasks

In addition to tasks/duties of a Level Three employee, the indicative tasks that the employee may perform at this level are:

- (a) supervision and guidance to all employees in the production process and/or ancillary functions;
- (b) responsible for the efficient operation of a number of work stations and/or sections of the plant;
- (c) performs maintenance work requiring trade certification;
- (d) assist with and provides on-the-job training and induction.

8. WAGE RATES

(a) Adult Employees

An adult employee of a classification hereunder mentioned shall be paid the amount assigned opposite that classification:

| Level | Relativity | Base Rate | Safety Net Adjustment | Weekly Wage Rate |
|---------|------------|-----------|-----------------------|------------------|
| | % | \$ | \$ | \$ |
| Level 1 | 82.00 | 373.40 | 172.70 | 546.10 |
| Level 2 | 87.40 | 373.40 | 172.70 | 546.10 |
| Level 3 | 92.40 | 385.50 | 172.70 | 558.20 |
| Level 4 | 100.00 | 417.20 | 172.70 | 589.90 |

(b) Juniors

The minimum rates of wages that may be paid to juniors shall be the undermentioned percentages of the total wage prescribed for employees in Classification Level 1, subclause (a) hereof:

| | Percentage |
|--------------------------|------------|
| Under 17 years of age | 60 |
| 17 to 18 years of age | 70 |
| 18 years of age and over | 100 |

(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 \$66 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 \$66 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 (e) Supported Wage System is \$546.10 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 personal 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 2008 State Wage Case Decision (T13142 of 2008) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

A period of one hundred and fifty two hours paid annual leave shall be allowed annually after 12 months continuous service (less the period of annual leave) to an employee in any one or more of the occupations to which this award applies.

(b) Broken Leave

Leave allowed under the provisions of subclause (a) of this clause shall be granted and taken in one consecutive period, or where the employer and employee agree, in any combination.

(c) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued.

(d) Payment in Lieu Prohibited

The annual leave provided by this clause shall be allowed and shall be taken and, except as provided in subclause (e) hereof, payment shall not be made or accepted in lieu of annual leave.

(e) Proportionate Leave on Termination of Service

If after one month's continuous service in any qualifying 12 monthly period an employee leaves the employment or is dismissed for other than misconduct, or the employment is terminated through no fault of the employee, the employee shall be paid at the ordinary rate of pay 12.67 hours for each completed month of service.

(f) Calculation of Continuous Service

For the purposes of this clause, service shall be deemed to be continuous notwithstanding:

- (i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence.
- (ii) any absence from work on account of personal sickness or accident, and in calculating the period of 12 month's continuous service, absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service.
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee, or leave lawfully granted by the employer, but in such absence shall not be taken into account in calculating the period of 12 months' continuous service.

(g) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 15 - Holidays with pay fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

(h) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period plus a loading of 17.5% of the amount paid in respect of annual leave.

The loading prescribed by this subclause shall not be paid in respect of proportionate leave on termination of service.

(i) Close Down for Annual Leave

Subject to agreement being reached between the employer and the majority of employees concerned the employer may close down sections or the entire plant and employees so entitled shall be granted all or some of their annual leave entitlements.

(j) Disputes

Any dispute under this clause shall be determined by the Tasmanian Industrial Commission whose decision shall be final.

10. BEREAVEMENT LEAVE

- (a) An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step-mother, step-father, 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 3 ordinary days, providing 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.

(b) Unpaid Bereavement Leave

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

(c) Casual Employees

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

11. CASUAL EMPLOYEES

A casual employee is a person who is employed for any period not exceeding 5 days at any time and shall be paid per hours one thirty-eighth of the weekly rates prescribed for the work performed and in addition for working ordinary time receive a loading of 25 per cent. This loading shall be paid in lieu of annual leave, personal leave and public holidays as prescribed elsewhere in this award.

12. CONTRACT OF EMPLOYMENT

- (a) Except as herein provided, employment shall be by the week. Any employee not specifically employed as a casual employee shall be deemed to be employed by the week.
- (b) An employee not attending for duty shall, except as provided in Clauses 9 - Annual Leave, 15 - Holidays with Pay and 24 - Personal Leave hereof, lose his pay for the actual time of non-attendance.
- (c) Casual employees (as defined) shall be engaged by the hour and employment may be terminated by one hour's notice by either party.
- (d)
 - (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 de-skilling.
 - (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 paragraphs (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

13. EXISTING WAGE RATES

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

14. FOOTWEAR AND WORKING GARMENTS

- (a) Employers shall provide suitable footwear to employees, who, in the course of their employment, are required to wear special footwear.
- (b) Overalls and such other outer garments as may be required and which the employer requests an employee to wear shall be supplied and maintained by the employer. Such garments shall remain the property of the employer.

15. 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 in Clause 7 - Definitions), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

PROVIDED that where Anzac Day falls on a Saturday or Sunday, the next following ordinary working day shall be observed as a holiday.

- (b) Payment for the holidays mentioned in subclause (a) 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) All time worked on any holiday mentioned herein shall be paid for at the rate of double time and a half.

PROVIDED that where the employer and employee/s concerned so agree time off at the penalty equivalent may be allowed in lieu of part or full payment for work performed on a public holiday provided such time off shall be paid at the ordinary rate.

- (d) An employee (other than a casual) shall be notified by the employer at least 7 days prior to a holiday that he or she is required to work on that holiday.

PROVIDED that an employee whose employment commences less than 7 days before any holiday shall be notified of such a requirement upon engagement.

PROVIDED ALWAYS that in case of an unforeseen emergency, the employer may notify such a requirement on less than 7 days notice. Notification of any requirement to work on a holiday shall be given to the employee personally or by posting a notice to all employees concerned in a prominent position in the employer's establishment or the relevant section or sections thereof.

- (e) An employee who fails to attend for duty on a holiday after being required to work thereon in accordance with subclause (d) hereof shall not be entitled to payment under subclause (a) hereof for a holiday not worked, except where his or her absence is due to personal illness or injury, proof of which maybe required by the employer.

PROVIDED that where, in cases of absence mentioned above, payment for more than one holiday not worked may be involved, the employee shall be disentitled to payment only for one holiday unless the employee is absent on the actual working days both immediately preceding and succeeding the holidays.

- (f) Where the employer and employee/s so agree any of the holidays mentioned in subclause (a) hereof may be worked at the ordinary rate of pay provided that another working day is substituted and taken and paid in accordance with subclause (b) hereof at a time agreed to by the employer and the employee/s concerned.

16. HOURS OF WORK - DAY WORKERS

- (a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or
 - (v) 152 hours within a work cycle not exceeding twenty-eight consecutive days in establishments where the method of banking of rostered days off have been agreed to.

PROVIDED that the method of working ordinary hours shall best suit the business concerned.

- (b) The ordinary hours of work prescribed herein may be worked on any or all days of the week, Monday to Friday, between 6.00 am and 6.00 pm.

PROVIDED that the spread of hours may be altered by mutual agreement between the employer and the majority of employees in the section or sections concerned.

PROVIDED ALWAYS that work done prior to the spread of hours fixed in accordance with this subclause for which overtime rates are payable shall be deemed for the purposes of this subclause to be part of the ordinary hours of work.

- (c) In any arrangement, ordinary working hours, where the ordinary working hours on any day are to exceed eight (8), the arrangement of hours shall be subject to the agreement of the employer and the majority of the employees in the section or sections concerned.

PROVIDED that the ordinary hours of work shall not exceed ten (10) on any day.

- (d) Where the employer and the employee/s agree to implement a system of rostered days off (RDO) in accordance with subclause (a)(v) hereof, employees may accrue up to a maximum of 10 RDO's per annum and be taken at a mutually agreed time.

PROVIDED that RDO's shall not be taken in the months of January to March and September to December in any year unless the employer decides otherwise or agreement is reached between the employer and the employee/s concerned.

- (e) Substitute Days

(i) Where a system of RDO's applies the employer may, with the agreement of the majority of employees concerned, substitute a scheduled RDO for another day in the case of a break-down in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

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

17. HOURS OF WORK - SHIFT WORKERS

- (a) Definitions

For the purposes of this clause:

'Afternoon Shift' means any shift finishing after 6.00 pm and at or before midnight.

'Continuous Shift' means work carried on with consecutive shifts of employees throughout the twenty-four (24) hours of each of at least six consecutive days

without interruption except during break-downs or meal breaks or due to unavoidable causes beyond the control of the employer.

'Night Shift' means any shift finishing subsequent to midnight and at or before 8.00 am.

'Rostered Shift' means a shift of which the employee concerned has had at least 48 hours notice.

(b) Hours - Continuous Shift Work

The ordinary hours for workers on continuous shift work shall not exceed 152 hours in twenty-eight (28) consecutive days.

PROVIDED that where the employer and employee/s agree, a roster system may operate to enable a weekly average of 38 ordinary hours to be achieved over a period exceeding 28 days.

Subject to the following conditions employees engaged on continuous shift work shall work at such times as the employer may require:

- (i) a shift shall consist of not more than 8 hours inclusive of crib time.

PROVIDED that the employer and employee/s concerned may agree that the ordinary hours of work on any day may exceed 8 hours to a maximum of 12 ordinary hours on any day.

- (ii) except at the regular change over of shifts, an employee shall not be required to work more than one shift in each twenty-four (24) hours;
- (iii) twenty (20) minutes shall be allowed to a shift worker each shift for crib which shall be counted as time worked.

(c) Hours - other than Continuous Work

With the exception of employees engaged on continuous shift work under subclause (b) of this clause the ordinary hours of work for shift workers shall be an average of 38 per week to be worked on one of the following bases:

- (i) 38 hours within a period not exceeding seven consecutive days; or
- (ii) 76 hours within a period not exceeding fourteen consecutive days; or
- (iii) 114 hours within a period not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a period not exceeding twenty-eight consecutive days; or

- (v) 152 hours within a work cycle not exceeding twenty-eight consecutive days in establishments where the method of banking of rostered days off has been agreed to.

The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than six (6) hours without a break for a meal. Except at regular change-over of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

- (d) Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

- (e) Variations by Agreement

Subject to subclauses (b) and (c) hereof the method of working shifts may be varied by agreement between the employer and the majority of employees concerned.

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by seven days notice of alteration given by the employer to the employees.

- (f) Afternoon Shifts

- (i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than the ordinary rate.

- (ii) A shift worker who works on an afternoon or night shift which does not continue:

- (A) for at least 5 successive afternoons or nights in a 5 day workshop or 6 successive afternoons or nights in a 6 day workshop; or

- (B) for at least the number of ordinary hours prescribed by one of the alternative arrangements in subclauses (b) and (c) hereof:

shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof in addition to his ordinary rate.

- (iii) An employee who:

- (A) during a period of engagement on shift, works night shift only; or

- (B) remains on night shift for a longer period than four consecutive weeks;
or
- (C) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle;

shall during such engagement period or cycle be paid 30 per cent more than the ordinary rate for all time worked during ordinary working hours on such night shift.

(g) Saturday Shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be substitution for and not cumulative upon the shift premiums prescribed in subclause (f) hereof.

(h) Overtime

- (i) Shift workers for all time worked in excess of or outside the ordinary working hours prescribed by this award or on a shift other than a rostered shift shall;
 - (A) if employed on continuous work be paid at the rate of double time; or
 - (B) if employed on other shift work at the rate of time and a half for the first two hours and double time thereafter, except in each case when the time is worked;
 - (C) by arrangement between the employees themselves;
 - (D) for the purpose of effecting the customary rotation of shifts

PROVIDED that when not less than 8 hours notice has been given to the employer by the employee who will be absent from work and the employee who should be relieved is not relieved and is required to work on a rostered day off, the unrelieved employee shall be paid double time.

- (ii) Where the employer and employee/s concerned agree time off in lieu of overtime payment may be taken at the penalty equivalent.

(i) Sundays and Holidays

Shift workers on continuous shifts for work on a rostered shift the major portion of which is performed on a Sunday or holiday shall be paid as follows:

- (i) Sundays - at the rate of double time;
- (ii) holidays as prescribed by this clause at the rate of double time.

Shift workers on other than continuous work for all time worked on a Sunday or holiday shall be paid at the rates prescribed in this award. Where shifts commence between 11.00 pm and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate.

PROVIDED that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday.

Where shifts fall partly on a holiday, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(j) Daylight Saving

Notwithstanding anything contained elsewhere in this award, in any area where by reason of the legislation of the State, summer time is prescribed as being in advance of the standard time of that State, the length of any shift:

- (i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; and
- (ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period:

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

18. MEAL AND MEAL ALLOWANCE

- (a) Meal intervals of not less than 30 minutes and not more than one hour shall be allowed not later than 6 hours after commencing work.
- (b) An employee who having worked continuously for 6 hours and subsequently is required to work overtime for more than one and a half hours or more shall be either supplied with a meal by the employer or be paid a meal allowance of \$14.60.

19. MIXED FUNCTIONS

Where an employee is called upon to perform 2 or more classes of work on any one day the employee shall, for the purpose of assessing the rate of wages to be paid, be deemed to have worked throughout the whole of his working time on that day at the class of work for which the highest rate of wage is prescribed.

20. OVERTIME

- (a) For all work done outside ordinary hours, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of overtime work. Provided that employees required to work overtime on Sunday shall be paid at the rate of double time.

PROVIDED that an employee required to work overtime on a Saturday or Sunday to perform stock-taking duties shall be paid for a minimum of two hours work.

- (b) An employee who is recalled to work overtime after a period of one hour from the time fixed for ceasing work whether or not he has been notified before ceasing work, shall receive a minimum payment as for 4 hours worked.

In computing overtime, each day's work shall stand alone.

- (c) Subject to agreement being reached between the employer and the employees concerned time off in lieu of the penalty equivalent for overtime work may be applied provided that the time off in lieu of the overtime penalty rate is paid at the ordinary rate of pay.

- (d) Requirement to Work Reasonable Overtime

(i) Subject to paragraph (ii) of this subclause and subclause (c) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.

(ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- (1) any risk to employee health and safety;
- (2) the employee's personal circumstances including any family responsibilities;
- (3) the needs of the workplace or enterprise;
- (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (5) any other relevant matter.

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.

(a) Definitions

For the purposes of this clause:

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

(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions

apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.

- (ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(vi) Special Maternity Leave

- (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

- (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
 - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
 - (3) a statutory declaration stating:

- (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
 - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are

necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

as if the employee was working part-time in the position held, immediately before resuming full-time work.

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

(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or

while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the

employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.

- (iv) Unbroken service as a replacement employee shall be treated as continuous service.
 - (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (i) Return to Former Position after a Period of Parental Leave or Part Time Work

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

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c) (vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

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

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:
 - (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
 - (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
 - (3) to return from a period of parental leave on a part-time basis until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

22. PART-TIME EMPLOYEES

Part-time employees engaged to work regularly less than 38 hours shall be paid per hour one thirty-eighth of the relevant weekly wage and shall be entitled to the annual leave, public holidays and personal leave as provided in Clause 9 - Annual Leave, Clause 15 - Holidays With Pay and Clause 24 - Personal Leave of this award.

23. PAYMENT OF WAGES

Payment of wages shall be made by electronic fund transfer into a financial institution account and be paid by no later than Thursday in each week. An employer shall not hold more than 2 days pay in hand.

24. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in subclause (j).

(a) Definitions

The term 'immediate family' includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) the employee shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

- (iii) an employee shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of 2 weeks of ordinary working time;
- (iv) for the purpose of administering paragraph (iii) of this sub- clause an employer may within one month of this award coming into operation or within 2 weeks of an 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.

(c) Personal Leave for Personal Injury or Sickness

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

- (d) Personal leave shall accumulate from year to year so that any balance of the period specified in sub-clause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee, and subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.

(e) Sickness on Day Off

Where an employee is sick or injured on the week day to be taken off as an RDO the employee shall not be entitled to personal pay nor will the personal pay entitlement be reduced as a result of the sickness or injury that day.

(f) Personal Leave to Care for an Immediate Family or Household Member_

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

Leave may be taken for part of a single day.

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

(g) Employee Must Give Notice_

the employee shall prior to the usual starting time of work inform the employer of the inability to attend work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

(h) Evidence Supporting Claim

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

PROVIDED that an employee who has completed six month's continuous service with the employer shall be allowed two single day absences in each year without the production of such proof, provided that such single day absence shall not be taken on the working day prior or the working day after a public holidays as prescribed in Clause 15 - Holidays With pay hereof.;

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

(i) Unpaid Personal Leave

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

(j) Casual Employees – Caring Responsibilities

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

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

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

25. PREFERENCE OF EMPLOYMENT

- (a) Preference of employment shall be given to members of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch for those classifications listed in (a) - Production Employees, subclause 1 - Wages of Clause 8 provided that such preference shall extend to persons who, not being members, undertake to become and within 14 days of so undertaking, do in fact become and remain members of the aforesaid union.
- (b) **PROVIDED** that such employees are competent and suitable to carry out the work required.
- (c) Conscientious objectors shall pay a sum equivalent to the union dues to a charity nominated by the union.
- (d) Where more than one person is applying for employment and all things are considered equal, the employer shall have freedom to select any one or more of such persons at his discretion.
- (e) This clause shall not apply to owners of businesses or their spouses or persons employed in managerial positions.

26. REFERENCE OF DISPUTES

Any dispute concerning this award shall be settled in the following manner:

- (a) negotiation between the employer and the union shop steward;
- (b) where there is no shop steward available or where the dispute is not settled within the provisions of subclause (a) of this clause, by negotiation between the union and employer representatives;
- (c) failing agreement being reached within the provisions of subclause (b) of this clause, the union or the employer may refer the matter to the Tasmanian Industrial Commission for decision.
- (d) At any stage during the aforementioned procedure either party may call for a 7 day cooling-off period to examine the issue in dispute. During this period work will continue uninhibited from industrial action.
- (e) This clause shall be applied where a dispute arises out of any provision in this award requiring agreement to be reached between both employer and employee/s.

27. RIGHT OF ENTRY OF UNION OFFICIALS

For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter the employer's premises during the mid-day meal break or crib time on the following conditions:

- (a) that the union official produces an authority to the gatekeeper or such other person as may be appointed by the employer;
- (b) that the union official interviews employees only at places where they are taking their meals or crib;
- (c) that if any employer alleges that a representative is unduly interfering with the work at the workplace, or is creating dissatisfaction amongst the employees or uses offensive methods, or is committing a breach of any of the previous conditions, such employer may refuse right of entry, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.

PROVIDED that where certain employees are working under a system of shift work which precludes a representative from interviewing them during the midday meal break, the representative shall have the right to enter the employer's premises at such times and under such conditions as to notice as may be usually arranged by the representative and the employer, or failing agreement at such times and under such conditions as the Tasmanian Industrial Commission may decide.

28. SUPERANNUATION

- (a) Contribution
 - (i) An employer shall make a contribution equivalent to 9% of ordinary time earnings with a minimum contribution of \$1.30 per week into TASPLAN in respect of all eligible employees (as defined) from 1 July 1990.
 - (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.

- (b) Definitions

'Eligible Employee' means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer, but excludes the spouse of the employer and children of the employer. Where an eligible employee has completed at least 3 months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

'TASPLAN' means the TASPLAN fund established by Trust Deed and Articles on 26 March 1990.

'**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 expense.

29. WORKPLACE CONSULTATION AND ENTERPRISE FLEXIBILITY

(a) Workplace Consultation

- (i) A participative/consultative mechanism may be implemented at the enterprise level where agreement exists between the employer and employees concerned.
- (ii) The process of consultative practices is a process through which employees can be involved in and positively contribute towards the management decision making process. Decisions are encouraged to be reached through consultative mechanisms/practices, however managerial prerogative is acknowledged.
- (iii) The process of consultative practices may be used to implement the provisions of subclause (b) - Enterprise Flexibility of this clause.
- (iv) Where enterprise consultative committees have been agreed to be established, as far as is practicable, employers and employees shall be at least equally represented on the Committee.

(b) Enterprise Flexibility

- (i) Notwithstanding anything contained in the agreement, 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.
- (ii) An agreement shall be subject to the following requirements:
 - (A) The majority of employees affected by the change must genuinely agree to the change.
 - (B) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (C) The relevant Union shall be advised by the employer of his or her intention to commence discussions with employees on an agreement under this clause.

- (D) The relevant Union must be a party to the agreement.
 - (E) The relevant Union shall not unreasonably oppose any agreement.
- (iii) Any enterprise agreement shall be signed by the parties, being the employer and the Union and contain the following:
- (A) The term of the agreement.
 - (B) The parties covered by the agreement.
 - (C) The classes of employees covered by the agreement.
 - (D) The means by which a party may retire from the agreement.
 - (E) The means by which the agreement may be varied.
 - (F) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (iv) Any agreement which seeks to vary a provision of this Award shall be referred to the Tasmanian Industrial Commission.

