

## **TASMANIAN INDUSTRIAL COMMISSION**

### **Industrial Relations Act 1984**

s23 application for award or variation of award

#### **Tasmanian Trades and Labor Council**

(T10886 of 2003)

Private and Public Sector Awards

#### **Tasmanian Trades and Labor Council**

(T10887 of 2003)

Private Sector Awards

#### **Tasmanian Trades and Labor Council**

(T10927 of 2003)

Private and Public Sector Awards

#### **Tasmanian Trades and Labor Council**

(T10928 of 2003)

Private Sector Awards

#### **FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT R J WATLING

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case July 2003 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002003 – Safety Net Review – Award rates increased by \$17 per week up to and including \$731.80, \$15 per week in award rates above \$731.80 per week – Wage related allowances increased by 3.24% - Meal allowances increased to \$12.30 – Supported Wage increased to \$60 per week – Operative date ffpp 1 August 2003 – State Minimum Wage determined at \$448.40 – s.35(1)(b) – Model Reasonable Hours Clause approved – Awards will be varied on application.**

## **CLAY AND MUD PRODUCTS AWARD**

### **ORDER BY CONSENT**

#### **No. 1 of 2003 (Consolidated)**

CLAUSES 8, 17 AND 22 ARE VARIED AND THE AWARD IS CONSOLIDATED:

## **1. TITLE**

This Award shall be known as the "Clay and Mud Products Award".

## **2. SCOPE**

This award is established in respect of the industry of manufacturing and or selling of articles made of clay or mud.

## **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 2003.

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 (until 30 November 1991) not to pursue any extra claims, award or overaward, except where consistent with those principles.

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

This award incorporates and supersedes No 1 of 2000 (Consolidated), No 2 of 2000, No 3 of 2000, No 1 of 2001, No 2 of 2001, No 1 of 2002 and No 2 of 2002.

**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:
  - (i) The Australian Workers' Union, Tasmania 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

## **7. DEFINITIONS**

**'Casual Employee'** means any person who is employed on a casual basis and includes any employee who is employed for a period not exceeding two months at any one time.

**'Leading Hand'** means an employee who is required to supervise or direct or be in charge of another employee or other employees and is appointed as such by the employer but shall not include an employee providing on-the-job training to other employees.

**'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.

**'Part-time Employee'** means an employee regularly employed for less hours per day or per week than a full time employee.

**'Clay and Mud Products Worker Grade 1'** (Percent wage relativity after completion of minimum rates adjustment process - 100 percent) means an employee who is competent to perform the functions of plant/vehicle/building repairs and/or alteration and/or installation and/or fabrication and/or maintenance at the qualified tradesman level and who is appointed as such and may include an employee who does not hold formal trades qualifications but is deemed by the employer to be equally competent.

An employee classified in this Grade will be expected to become competent in a range of the functions embraced within this definition and reasonably within his competence and attain an overall working knowledge of the production process.

A Clay and Mud Products Worker Grade 1 shall be responsible for the quality of the work they perform including its effect on the overall quality of the product and will be required to identify and rectify problems or potential problems within the production process.

A Clay and Mud Products Worker Grade 1 may be required to perform the functions of Clay and Mud Products Worker Grades 2 and/or 3.

**'Clay and Mud Products Worker Grade 2'** (Percent wage relativity to Clay and Mud Products Worker Grade 1 as defined - 93 percent) means an employee who is competent and is engaged to operate plant and equipment with little or no supervision which shall include kiln operator, extruder operator, setting machine operator, mechanical equipment operator engaged and responsible for clay extraction and/or preparation, fork lift truck driver (as defined), truck driver and dispatch clerk.

An employee classified in this Grade will be expected to become competent in a range of functions embraced by this definition and attain a basic knowledge of the overall production process and a thorough knowledge of the equipment within his field of competence.

A Clay and Mud Products Worker Grade 2 shall be responsible for the quality of the work they perform including its effect on the overall quality of the product and will be required to identify and rectify or cause to be rectified problems or potential problems within their area of responsibility.

A Clay and Mud Products Worker Grade 2 may be required to perform routine maintenance and/or repair work on the machinery they are operating and may be required to assist a Clay and Mud Products Worker Grade 1 to perform their function.

A fork lift driver for the purposes of this definition shall be limited to an employee who is capable to perform that function as well as other functions within the Clay and Mud Products Worker Grade 2 range of functions.

Clay and Mud Products Worker Grade 2 may be required to perform the functions of a Clay Products Worker Grade 3.

**'Clay and Mud Products Worker Grade 3'** (Percent wage relativity to Clay and Mud Products Worker Grade 1 as defined - 85 percent) means an employee who is deemed by the employer to be competent and is engaged to perform functions not included in Clay and Mud Products Worker 1 and 2 and shall include labouring duties, machine attendant, mechanical equipment operator (other than as defined in Clay and Mud Products Worker Grade 2) or fork lift truck driver (other than as defined in Clay and Mud Products Worker Grade 2) and dehackers.

An employee classified as a Clay and Mud Products Worker Grade 3 will be expected to become competent in a range of duties embraced within the Grade and to obtain a basic working knowledge of the production process.

A Clay and Mud Products Worker Grade 3 shall be responsible for the quality of the work they perform including its effect on the overall quality of the product and will be required to identify problems or potential problems within the production process.

'Machine Attendant' for the purposes of this definition means an employee who works on a machine or piece of equipment in the production process and who exercises discretion as to the operation of that machine or piece of equipment including the routine starting and/or stopping of that machine or piece of equipment and other elementary and/or repetitive duties associated with a machine.

**'Clay and Mud Products Worker Grade 4'** (Percent wage relativity to Clay and Mud Products Workers Grade 1 as defined - 76 percent) means a trainee who is engaged without previous experience in the industry and shall be so classified for a period of no more than twelve months.

A Clay and Mud Products Worker Grade 4 will be required to attain a basic working knowledge of the whole production process and to this end they should be rotated on a range of functions described in Clay and Mud Products Worker Grade 3.

A Clay and Mud Products Worker Grade 4 shall perform largely under the direction of a leading hand and/or supervisor and/or a higher graded employee.

**8. WAGE RATES**

(a) Adult Employees

An employee shall be classified on commencement in one of the classifications contained in this award and shall be paid not less than the weekly wage rate amount assigned to the relevant grade provided hereunder:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Clay and Mud Products Worker				
Grade 1	100	417.20	125.00	542.20
Grade 2	93	388.00	123.00	511.00
Grade 3	85	354.60	123.00	477.60
Grade 4	78	325.40	123.00	448.40

(b) Apprentices

The minimum weekly wage rate to be paid to an apprentice shall be the undermentioned percentage of the weekly wage rate for a Clay and Mud Products Worker, Grade 1, as contained in subclause 8(a).

	Percentage of Clay and Mud Products Worker, Grade 1 %
1st year	38
2nd year	55
3rd year	75
4th year	88

(c) Unapprenticed Juniors

The minimum weekly wage rate payable to an unapprenticed junior shall be the undermentioned percentage of the weekly wage rate for Clay and Mud Products Worker Grade 3, as contained in subclause 8(a).

	Percent age of Clay and Mud Products Worker, Grade 3 %
Under 17 years of age	65
Over 17 years but under 18 years of age	75
Over 18 years but under 19 years of age	90

(d) Leading Hands

In addition to the rates prescribed in subclause 8(a) hereof, a leading hand shall be paid:

- (i) In charge of less than 3 other employees per week an extra \$11.60
- (ii) In charge of 3 but not more than 6 other employees per week an extra \$15.00.
- (iii) In charge of more than 6 other employees per week an extra \$17.90.

(e) 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, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(ii) For the Purposes of this Subclause:

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

**'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.

**'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.

**'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 8(e)(iv))	% 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 \$60 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 four 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 8(e)(iv) and 8(e)(v).

- (3) The minimum amount payable to the employee during the trial period shall be no less than \$60 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 8(e)(iii) hereof.

(f) 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 Clause 8(e) Supported Wage System is \$448.40 per week.
- (2) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (i)(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 (i)(1) according to the number of hours worked.

(iii) How the Minimum Wage Applies to Junior

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

(iv) Application of Minimum Wage to Certain Employees

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

(v) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (1) applies to all work in ordinary hours;
- (2) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (3) is inclusive of the arbitrated safety net adjustment provided by the July 2003 State Wage Case Decision (T10887 of 2003) and all previous safety net and state wage case adjustments.

## **9. ANNUAL LEAVE**

### (a) Period of Leave

#### (i) Dayworkers

A period of 152 working hours annual leave shall be allowed annually to an employee (except casual employees) after 12 months' continuous service (less the period of annual leave in the second and subsequent years). A part-time employee shall be allowed annual leave on a pro-rata basis on the same ratio as his or her hours worked bear to 38 hours.

**PROVIDED** in the event of an employee being absent in excess of one day or shift in any calendar month for any reason other than personal illness and or accident (not due to misconduct) or absence with leave of the employer or other reasonable cause he shall forfeit the annual leave that would otherwise accrue for the period of such absence.

#### (ii) Shiftworkers

In addition to the leave prescribed in paragraph (a)(i) of this subclause, seven day shiftworkers, that is shiftworkers who are rostered to work regularly on Sundays and Holidays, shall be allowed seven consecutive days' leave including non-working days.

Where an employee with 12 months' continuous service is engaged for part of the 12 monthly period as a seven day shiftworker, he shall be entitled to have the period of annual leave prescribed in paragraph (i) increased by one half a day for each month he is continuously engaged.

### (b) Proportionate Leave on Termination of Service

If, after one month's service in any 12 monthly period, an employee leaves his employment by giving one week's notice, or the employment is terminated by the employer, through no fault of the employee, the employee, subject to any deduction as prescribed in subclause (a) hereof, shall be paid -

(i) Dayworkers - 12.66 hours per completed month of service.

(ii) Shiftworkers - 15.83 hours per completed month of service on shift work.

### (c) Cessation of Work

In the event of a cessation of operations due to fire, breakdown of machinery, or other causes beyond the control of the employer, the time lost, if any, in that month by an employee shall not involve any penalty against holidays accrued or accruing, but if the cessation extends through the next succeeding month, no holidays shall be credited to an employee for that month or any month thereafter until such time as operations are recommenced.

(d) Annual Leave Exclusive of Public Holidays

Leave prescribed in this subclause shall be in addition to the holidays prescribed in Clause 19 - Holidays with Pay hereof, and if any such holiday falls during an employee's annual leave, there shall be added to that leave one day for each such holiday so falling.

(e) Time of Taking Leave

Annual Leave shall be given at a time fixed by the employer within a period of 12 months from the date when the right to annual leave accrued and after two weeks notice to the employee.

(f) Broken Leave

Annual leave may be given and taken in either one or two separate periods the lesser of which shall be of at least 1 weeks duration or by mutual agreement between the employer and employee in any other combination.

(g) Payment in Lieu Prohibited

Payment may only be made in lieu of the taking of annual leave in accordance with subclause (b) of this Clause.

(h) Disputes

Any dispute under this clause shall be processed in accordance with Clause 31 - Resolution of Disputes.

(i) Payment for Period of Leave

(i) An employee before going on leave shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period.

(ii) In addition to payment for annual leave day workers shall receive a loading of 17.5 percent.

Shiftworkers - an employee who would have worked on shift work had he not been on leave - a loading of 17.5 percent, providing that where such employee would have received shift work allowances and/or weekend penalty rates and/or holiday penalty rates had he not been on leave during the relevant period and such allowance and/or penalty rates would have entitled him to a greater amount than the loading of 17.5 percent he shall be paid the greater amount in lieu of such loading.

(iii) The annual leave loading shall be payable on the prescribed award wage rates, and shall not be payable pro-rata on termination.

(j) Annual Close Down

When an employer elects to shut down the plant for the purposes of allowing annual leave to all or the majority of employees, any employees with insufficient accruals may be paid an advance on future leave accruals or take leave without pay.

Where an employee takes leave in advance the wages shall be refunded to the employer either on the completion of the annual leave accrual or on termination.

**10. BOILING WATER**

Employers shall ensure a sufficient supply of boiling water for employees at meal times.

**11. CALL OUT**

An employee recalled to work overtime after leaving his employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours' work at the appropriate rate for each time he is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full three hours if the job he was recalled to perform is completed within a shorter period. This clause shall not apply in cases where it is customary for an employee to return to his employer's premises to perform a specific job outside his ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

**PROVIDED** that where an employee is recalled to fill a vacancy created by the un-notified non-attendance of another employee the provisions of this clause shall not apply.

**12. CASUAL EMPLOYEES**

A casual employee for working ordinary time shall be paid per hour one thirty eighth of the weekly rates prescribed for the work which he or she performs, plus 20 percent; such additional amount to be payable in lieu of annual leave, sick leave and public holidays.

**13. COMPASSIONATE LEAVE**

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, grand-father, grand-mother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

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.

#### **14 CONTRACT OF EMPLOYMENT**

- (a) All employees (except casual employees) shall be engaged by the week for a minimum period of eight weeks and may be terminated by either side by the payment or forfeiture of a weeks wages should such notice not be given.

**PROVIDED** that during the first eight weeks of service an employee shall be deemed to be a probationary employee and employment may be terminated by giving one hours notice.

**PROVIDED FURTHER** nothing in this clause shall affect the right of the employer to dismiss without notice an employee due to incompetence or misconduct in which case wages shall be paid up to the time of dismissal only.

- (b) (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 tools and equipment.
- (iii) Any direction issued by an employer pursuant to paragraphs (b)(i) and (b)(ii) herein shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### **15. DISTANT WORK**

Where an employee is engaged on work distant from his place of engagement and is unable to return home each evening and is required to board or camp, any additional expenses to which he is put shall be paid by the employer. In all such cases the necessary travelling expenses and/or other transport shall be provided by the employer, and in such cases employees shall be paid at the ordinary prescribed rates whilst travelling.

## **16. ENTERPRISE AGREEMENTS**

- (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.
- (c) An 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.

## **17. FIRST AID ATTENDANT**

An employee holding first aid qualifications from the Red Cross Society or St. John Ambulance or a similar body and appointed by the employer to perform first aid duty shall receive \$6.60 per week

## **18. HOLIDAY AND SUNDAY WORK (DAY WORKERS)**

- (a) For all ordinary time worked on a Sunday payment shall be paid at the rate of time and one half for the first four hours and double time thereafter.
- (b) For all overtime worked on a Sunday payment shall be made at the rate of double time.
- (c) All work performed on any of the holidays mentioned in Clause 19 - Holidays with Pay shall be paid at the rate of double time and one half.

## **19. HOLIDAYS WITH PAY**

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:- New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in subclause (a) 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) Payment to an employee for work performed on a holiday mentioned in subclause (a) shall be made at the rates prescribed elsewhere in this award.
- (d) **PROVIDED** that by agreement between the employer and the majority of employees in the plant or section or sections concerned any of the holidays can be transferred to another day in which case work performed on the holiday shall not attract any penalty.

## **20. HOURS**

- (a) Day Workers
  - (i) The ordinary hours of work per week shall be an average of 38 to be worked between 6.00 am and 6.00 pm on any day Monday to Friday inclusive.  
**PROVIDED** that the provisions of this subclause may be varied by agreement between the employer and the majority of employees in the plant or section or sections concerned.
  - (ii) The employer may at his discretion require employees in the plant or section or sections concerned to work up to 10 hours per day.

(iii) By agreement between the employer the union and the majority of employees in the plant or section or sections concerned ordinary hours not exceeding 12 per day may be worked subject to:

- (1) proper health monitoring procedures being introduced;
- (2) suitable roster arrangements being made; and
- (3) proper supervision being provided.

**PROVIDED** that where there is agreement to work 12 hour shifts the span of hours stipulated in paragraph (a)(i) of this clause shall be varied by agreement to appropriately reflect the work requirements.

(iv) Where hours are organised in such a way as to provide an employee with a maximum of 12 rostered days off per year by way of banking time on previous days in an agreed work cycle the following criteria shall apply:

- (1) (A) Rostered Days Off (RDO's) may be banked up to a maximum of five at the employers discretion provided that the employer shall give one months notice of his intention to require accumulation.

**PROVIDED** that more than five RDO's may be banked by agreement between the employer and an employee for the purposes of meeting peak demands or to ensure continuous production.

- (B) Accumulated RDO's shall be taken either in whole or in part at the discretion of the employer.

- (2) RDO's once rostered may be altered by mutual consent between the employer and an employee. Such consent shall not be unreasonably withheld by an employee.

(b) Meal Breaks

- (i) Employees shall be allowed a meal break of not less than 30 minutes which break shall be unpaid.
- (ii) No employee shall be required to work for more than five hours without a break for a meal.

**PROVIDED** that for the purposes of ensuring continuous running of plant and/or equipment an employer may require an employee to work up to 6 hours before a break for a meal is allowed.

(c) Shiftworkers

(i) for the purposes of this clause:

**'Afternoon shift'** means any shift finishing after 6.00 pm and at or before midnight. This provision shall not apply if a shift finishes after 6.00 pm in accordance with an agreement reached in accordance with paragraph (a)(iii) of this clause.

**'Night shift'** means any shift finishing after midnight and at or before 8.00 am.

The ordinary hours of shift workers shall not [except as provided for in (c)(ii) or (c)(iii)] exceed:

- (1) 8 in any day; nor
  - (2) 80 in 14 consecutive days; nor
  - (3) 160 in 28 consecutive days
- (ii) By agreement between the employer and the majority of employees in the plant or section or sections concerned shifts of up to 10 hours per shift may be worked.
- (iii) By agreement between the employer the union and the majority of employees in the plant or section or sections concerned shifts of up to 12 hours may be worked subject to:
- (1) proper health and monitoring procedures being introduced.;
  - (2) suitable roster arrangements being made; and
  - (3) proper supervision being provided.

(d) Daylight Saving

Where daylight saving is either introduced or ceases employees shall be paid for a standard shift regardless of the time shown by the clock.

(e) Split Shifts

By agreement between the employer and an employee or the majority of employees affected shifts may be organised so that they are worked in more than one period provided that no shift shall be split into more than two parts.

## **21. INCLEMENT WEATHER**

- (a) An employee shall not lose pay for time lost through inclement weather.
- (b) Any decision as to whether or not any conditions shall be regarded as inclement shall be mutually made by a management and employee representative.

Work shall only cease where weather conditions are so extreme that work cannot be carried out because of safety issues.

- (c) Work shall recommence immediately the employer declares that the inclement weather no longer poses a safety problem.
- (d) An employee shall not be entitled to payment for any stoppage of work as a result of inclement weather unless he remains at the work place until permitted to leave by the employer.
- (e) Employees working in areas not exposed to inclement weather shall not cease work merely because others who are so exposed cease work.

## **22. MEAL ALLOWANCE**

An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he will be so required to work shall either be supplied with a meal by the employer or paid \$12.30 but such payment need not be made to employees living in the same locality as their place of work who can reasonably return home for meals.

Unless the employer advises an employee on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second and/or subsequent meals or make payment in lieu thereof as above prescribed.

## **23. MIXED FUNCTIONS**

An employee engaged for more than half of one day or shift on duties classified at a higher grade shall be paid at the higher grade for the whole day or shift. Where such work is for less than half of one day or shift payment at the higher rate shall be made for the time actually worked in the higher grade.

This provision shall not apply in circumstances where an employee is performing higher duties as part of a training programme which is directed to skill enhancement.

- (a) For all time of duty in excess of ordinary hours payment shall be made at the rate of time and one half for the first two hours and double time thereafter.

**PROVIDED** that by agreement between the employer and the employee the employee may take time off in lieu of the penalty rate payment prescribed in this subclause. Such time off shall be calculated as time for time and not at the penalty equivalent.

- (b) In computing overtime payments each days work shall stand alone.

**PROVIDED** that by agreement between the employer and the majority of employees in the plant section or sections concerned overtime may be calculated over the same span over which hours of work are averaged.

- (c) Employees required to hold themselves "on-call" for recall to work outside of ordinary hours shall, until released, be paid at ordinary rates from the time from which they are told to hold themselves in readiness.

**PROVIDED** that an employee shall forfeit entitlement to payment under this subclause if the employer is unable to contact them whilst "on-call".

- (d) An employee shall work a reasonable amount of overtime at the direction of the employer.

#### **24. OVERTIME**

- (a) For all time of duty in excess of ordinary hours payment shall be made at the rate of time and one half for the first two hours and double time thereafter.

**PROVIDED** that by agreement between the employer and the employee the employee may take time off in lieu of the penalty rate payment prescribed in this subclause. Such time off shall be calculated as time for time and not at the penalty equivalent.

- (b) In computing overtime payments each days work shall stand alone.

**PROVIDED** that by agreement between the employer and the majority of employees in the plant section or sections concerned overtime may be calculated over the same span over which hours of work are averaged.

- (c) Employees required to hold themselves "on-call" for recall to work outside of ordinary hours shall, until released, be paid at ordinary rates from the time from which they are told to hold themselves in readiness.

**PROVIDED** that an employee shall forfeit entitlement to payment under this subclause if the employer is unable to contact them whilst "on-call".

- (d) An employee shall work a reasonable amount of overtime at the direction of the employer.

## **25. PARENTAL LEAVE**

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

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

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(c) Eligibility for Maternity Leave

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

(iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

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

(f) Transfer to a Safe Job

Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

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

(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(i) Special Maternity Leave and Sick Leave

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

and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.

- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

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

**PART B - PATERNITY LEAVE**

(a) Nature of Leave

Paternal leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;

- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
  - (1) he will take that period of paternity leave to become the primary care-giver of the child;
  - (2) particulars of any period of maternity leave sought or taken by his spouse; and
  - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- (e) Notice Requirements
  - (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
  - (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
    - (1) the birth occurring earlier than the expected date; or
    - (2) the death of the mother or the child; or
    - (3) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.
- (f) Variation of Period of Paternity Leave
  - (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
    - (1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and the employee.
  - (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

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

(k) Return to Work after Paternity Leave

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

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

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

(l) Replacement Employees

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

**PART C - ADOPTION LEAVE**

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

**'Child'** means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

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

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

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

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

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

(c) Eligibility

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

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

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

(d) Certification

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

- (i)
  - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
  - (2) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

- (1) the employee is seeking adoption leave to become the primary caregiver of the child;
- (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave

- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

- (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and employee.
  - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

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

## PART D - PART-TIME WORK

### (a) Definitions

For the purposes of this part:

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

**'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

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

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

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

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

### (b) Entitlement

With the agreement of the employer:

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

(iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

(i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

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

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

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

(i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:

- (1) that the employee may work part-time;
- (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- (3) upon the classification applying to the work to be performed; and
- (4) upon the period of part-time employment.

(ii) The terms of this agreement may be varied by consent.

(iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

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

(i) Termination of Employment

(i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

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

## **26. PART-TIME EMPLOYEES**

A part-time employee is one engaged to work regularly for a lesser number of hours per day or per week than a full time employee.

A part-time employee for working ordinary time shall be paid per hour one thirty-eighth of the appropriate weekly rate.

All other conditions of this award shall apply to a part-time employee in the same proportion as their weekly hours bear to 38.

## **27. PAYMENT OF WAGES**

Wages may be paid weekly, fortnightly or four weekly by agreement between the employer and employee. Such payment being by way of cash, cheque or EFT in the employers time.

On termination provided appropriate notice has been given, wages shall be paid within 24 hours of such termination.

## **28. PREFERENCE OF EMPLOYMENT**

Preference of employment shall be given to financial members of The Australian Workers' Union if all other things are equal.

## **29. PRODUCTIVITY AND EFFICIENCY COMMITTEE**

A committee is to be established comprising representatives from management and employees which will meet on a regular basis to identify, discuss and implement measures to improve productivity and/or efficiency.

## **30. PROTECTIVE CLOTHING**

- (a) Overalls or other suitable protective clothing shall be provided where the nature of the work causes undue wear or deterioration to normal working clothes if requested by the employee provided that one set of such clothing shall be supplied to permanent employees only after three months service, and thereafter at intervals of not less than six months provided further the administration of this sub-clause may be varied by mutual consent.
- (b) An adequate supply of gloves or similar suitable protective equipment shall be supplied to burners on intermittent kilns, and employees engaged in the loading and unloading of kilns.

- (c) Protective clothing and footwear supplied by the employer shall be worn.
- (d) If an employee is required to work in a wet place or in a heavy rain he shall be provided with gum boots or overboots, oilskins and suitable headgear, so as to protect him from getting wet.
- (e) A place shall be deemed to be wet when water, other than rain, is continually dropping from overhead so as to saturate the clothing of the employee if unprotected and/or when water in the place where the employee is standing is over 50 mm deep.
- (f) Rain shall be deemed to be heavy when, if the employee works there in as required, his clothing will become saturated.

### **31. RESOLUTION OF DISPUTES**

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

- (a) The matter should first be discussed between the employee and his immediate supervisor. At the employee's option his delegate may also be present.
- (b) If not settled, the matter shall be submitted by the shop steward or union representative to the industrial officer or other appropriate officer of the employer.
- (c) If not settled, the matter shall be formally submitted by the State Secretary of The Australian Workers' Union or other appropriate official of the union to the employer.
- (d) Until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, its officials, the Australian Workers' Union and their members, will take all possible action to settle any dispute within seven days of notification of the dispute to the employer.
- (e) No party shall be prejudiced as to final settlement by the continuance of work.
- (f) In the event of an employee being instantly dismissed the employer will notify the Australian Workers' Union steward or official as soon as possible where the employee is a member of the union.

The union will notify the employer of a dispute if it is contended by the union that there are reasons why the dismissal is incorrect.

### **32. RIGHT OF ENTRY OF UNION OFFICIALS**

- (a) For the purposes of interviewing employees on legitimate union business a duly accredited representative of the AWU-FIME Amalgamated Union shall have the right to enter the employer's premises during the midday meal break on the following conditions.
  - (i) That he produces his authority to the gatekeeper or such other person as may be appointed by the employer.
  - (ii) That he interviews employees only at places where they are taking their meal.
  - (iii) That no one representative visits the premises more than once in each week.
  - (iv) That if an employer alleges that a representative is unduly interfering with his work or is creating dissatisfaction amongst his employees or is offensive in his 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.

### **33. SAFETY EQUIPMENT**

All safety equipment issued by the employer must be worn or used by an employee at the direction of the employer. Failure by an employee to carry out an employer direction liables an employee to disciplinary action which may lead to dismissal.

### **34. SHIFT, WEEKEND AND HOLIDAY PENALTIES**

- (a) Shift workers shall be paid 12.5 percent extra for each shift worked including day shift.
- (b) Where a shift worker is required to work an ordinary rostered shift on a Saturday or a Sunday he shall be paid time and one half and double time respectively, such penalty rates not being subject to the shift allowance hereinbefore prescribed.

**PROVIDED** that by agreement between the employer and employee an employee may take time off in lieu of all or any such payments, such time off to be computed on the basis of time for time.

- (c) Where a shift worker is required to work an ordinary rostered shift on a statutory holiday, he shall be paid double time and a half for so working, such penalty rate not being subject to the shift allowance hereinbefore prescribed.

**PROVIDED** that by agreement between the employer and employee, an employee may take time off in lieu of all or any such payments, such time off shall be computed on the basis of time for time.

- (d) Where a shift worker is required to work a second or double shift in any twenty four hour period, he shall be paid at the rate of double time. Except where such work is worked by arrangement between the employees themselves or for the purpose of effecting the customary rotation of shifts.

### **35. SICK LEAVE**

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
  - (ii) he shall, prior to the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
  - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he 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) he shall not be entitled in any year to sick leave in excess of 76 hours of ordinary working time.
- PROVIDED** that during the first six months of employment sick leave shall accrue on a monthly basis at the rate of 6.33 hours of sick leave for each completed month of service with the employer which accrual shall be the limit of an employee's entitlement to sick leave during that period.
- (v) For the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee, and subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year;

- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

### **36. SUPERANNUATION**

- (a) Contribution

An employer shall make a contribution equivalent to three percent of ordinary time earnings into Tasplan in respect of all eligible employees (as defined) calculated as at 22 July 1991 and recalculated at 1 June each ensuing year. Ordinary time earnings shall exclude overtime and allowances in the nature of a reimbursement (such as meal money).

- (b) Casual and Part-time Employees

In the case of eligible casual and part-time employees, contributions shall be made where the employee works at least 30 hours over a fund billing statement month.

- (c) Definitions

**'Eligible Employee'** shall mean an employee whether weekly, part-time or casual, who has had at least 6 months continuous service with an employer subject to this award.

**'Tasplan'** shall mean the superannuation fund established by Trust Deed dated 2 March 1989, and approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

- (d) Exemption

An employer may seek exemption from making contributions into the nominated fund in the following circumstances:

- (i) Where employees subject to this award represent a minority of the total employees and contributions are already being made into an approved fund (as defined) in respect of the majority of employees in any one establishment; or
- (ii) Where the fund subject to the exemption application is an approved fund which was established prior to 1 June 1991 and occupational superannuation contributions equivalent to three percent of ordinary time earnings were being paid on behalf of all employees in the establishment covered by this award prior to and have continued to be paid since that date; or

(iii) Where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than the nominated approved fund.

(e) Procedure for Seeking Exemption

An employer seeking exemption shall, not later than 22 September 1991:

(i) Make application to the Tasmanian Industrial Commission;

(ii) Applications shall contain the following information:

(1) Name of Fund.

(2) Evidence of compliance with Commonwealth Operational Standards.

(3) Summary of structure and benefits.

(4) Level of administration charge.

(5) Any other relevant information.

(iii) Any application shall in the first instance be considered by the union party to this Award which in each case has constitutional coverage for the class of employee affected. Where the union agrees with the application, the exemption will be granted.

(iv) An employer may choose to forego consideration of his application by the union and have the matter determined in the first instance by the Commission.

(v) An employer who commences a new business after 22 September 1991 may make application for exemption in accordance with subclause (e) 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 22 July 1991.

(f) The following employer has been granted exemption in accordance with subclauses (d) and (e) of this clause.

Employer Funds

Clifton Brick (Tasmania) Pty Ltd - Brick & Pipe Industries Ltd Retirement Fund

### **37. SUSPENSION**

The employer may, in the event of misconduct, suspend an employee without pay. Prior to the implementation of a suspension the Union shall be advised of the intention to undertake this action if the employee is a member of the union. Nothing in this subclause shall affect the right of the employer to dismiss an employee in accordance with the provisions of clause 14 - Contract of Employment.

### **38. WORKING TIME**

Employees shall be at their work station ready to commence work at their normal commencement time and are to remain working at their work station until the "knock-off" siren sounds.

All wash-up and walking time to and/or from the job shall be unpaid.

P C Shelley  
**COMMISSIONER**

17 July 2003