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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T12940 of 2007)
Private Sector Awards
Public Sector Awards

FULL BENCH:

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

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to \$14.10 - State Minimum Wage rate determined at \$527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

CLAY AND MUD PRODUCTS AWARD

ORDER -

**No. 1 of 2007
(Consolidated)**

AMEND THE **CLAY AND MUD PRODUCTS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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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

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Annual Leave	9
Bereavement leave	10
Boiling Water	11
Call Out	12
Casual Employees	13
Contract of Employment	14
Distant Work	15
Enterprise Agreements	16
First Aid Attendant	17
Holiday and Sunday Work (Day Workers)	18
Holidays with Pay	19
Hours	20
Inclement Weather	21
Meal Allowance	22
Mixed Functions	23
Overtime	24
Parental Leave	25
Part-Time Employees	26
Payment of Wages	27
Personal Leave	28
Preference of Employment	29
Productivity and Efficiency Committee	30
Protective Clothing	31
Resolution of Disputes	32
Right of Entry of Union Officials	33

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Safety Equipment	34
Shift, Weekend and Holiday Penalties	35
Superannuation	36
Suspension	37
Working Time	38

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2007.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Clay and Mud Products Award No 2 of 2006 (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:
 - (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

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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.

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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.

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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	203.70	620.90
Grade 2	93	388.00	201.70	589.70
Grade 3	85	354.60	201.70	556.30
Grade 4	78	325.40	201.70	527.10

(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

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(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 \$13.30
- (ii) In charge of 3 but not more than 6 other employees per week an extra \$17.20.
- (iii) In charge of more than 6 other employees per week an extra \$20.60.

(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.

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'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 \$61 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.

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(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).

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- (3) The minimum amount payable to the employee during the trial period shall be no less than \$61 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 \$527.10 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 (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).

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(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 2007 State Wage Case Decision (T12940 of 2007) 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.

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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.

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(h) Disputes

Any dispute under this clause shall be processed in accordance with Clause 32 - 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. 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, 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.

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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. BOILING WATER

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

12. 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.

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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.

13. 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, personal leave and public holidays.

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.

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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 \$7.50 per week.

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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.

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(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.

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(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.

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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 \$14.10 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.

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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.

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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.

(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.

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(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.

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- (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

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- (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.

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- (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.

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(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.

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(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.

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(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 other wise 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.

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(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.

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- (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).

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. 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

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(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) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

(iii) he shall not be entitled in any year to personal leave in excess of 76 hours of ordinary working time.

PROVIDED that during the first six months of employment personal leave shall accrue on a monthly basis at the rate of 6.33 hours of personal leave for each completed month of service with the employer which accrual shall be the limit of an employee's entitlement to personal leave during that period.

(iv) For the purpose of administering paragraph (b)(iii) 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.

(c) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (b)(iii) 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;

(d) An employer shall not be required to make any payment in respect of accumulated personal 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.

(e) 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.

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(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

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;

(h) Evidence Supporting Claim

- (i) 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 personal leave is claimed;
- (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.

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(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.

29. PREFERENCE OF EMPLOYMENT

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

30. 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.

31. 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 subclause 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.

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- (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.

32. 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.

33. 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.

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- (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.

34. 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.

35. 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.

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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;

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- (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.

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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
DEPUTY PRESIDENT

25 July 2007