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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

BARRISTERS AND SOLICITORS AWARD

ORDER -

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

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

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PART I - APPLICATION AND OPERATION OF THE AWARD

1. TITLE

This award shall be known as the "Barristers and Solicitors Award".

2. INDEX

SUBJECT MATTER

CLAUSE NO.

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3. SCOPE

- (a) This award is established in respect of Barrister and/or Solicitor.
- (b) Exemptions

This award shall not apply to:

- (i) a legal practitioner;
- (ii) Articled Clerks and Apprentices at Law;

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. AWARD INTEREST

- (a) The following employee organisation has an interest this award under Section 63(10) of the *Industrial Relations Act 1984*:

the Australian Municipal, Administrative, Clerical and Services Union;

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- (b) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:

the Tasmanian Chamber of Commerce and Industry Limited.

- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labor Council.

6. SUPERSESION

This award incorporates and supersedes the Barristers and Solicitors Award No. 2 of 2006 (Consolidated).

PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. DEFINITIONS

'Casual employee' means any person specifically engaged to work on an irregular basis, as and when required by mutual consent between employer and employee, but does not include any person employed on a part-time or full-time basis.

'Full-time employee' is one engaged to regularly work for 37.5 hours per week.

'Juniors' shall mean employees under the age of 21 years.

'Part-time employee' is one engaged to regularly work for less hours per day or week than those prescribed for full-time employees.

'Permanent employee' means an employee engaged on a regular, continuous basis.

TRAINEE AND TRAINEESHIP DEFINITIONS:

'Appropriate State Legislation' means the *Tasmanian Vocational Education and Training Act 1994* and any amendments to the Act.

'Approved Training' means training (both on or off the job) in a Traineeship approved by the Tasmanian State Training Authority and shall involve formal instruction, both theoretical and practical, and supervised practice. The training will be accredited and lead to qualifications in accordance with the relevant National Training Package.

'Existing employee' means an employee who was employed prior to entering a training agreement with the same employer.

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'**Trainee**' means an employee who is bound by a Training Agreement made in accordance with this award.

'**Traineeship**' means a system of training which has been approved by Tasmanian State Training Authority.

'**Training Agreement**' means an agreement made subject to the terms of this award between an Employer and the Trainee for a Traineeship and which is registered with the Tasmanian State Training Authority, under the provisions of the appropriate State legislation.

2. CONTRACT OF EMPLOYMENT

(a) Except in the case of casual employees employment shall be by the week.

(b) Duties

An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training consistent with the classification structure of the award.

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

3. EMPLOYMENT CATEGORIES

(a) A casual employee for working ordinary time shall be paid per hour, 2/75ths of a weekly rate prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20 percent of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, personal leave and public holidays.

(b) Part-time Employees

(i) The wage rates payable per hour shall be 2/75ths of the relevant rates above set out.

(ii) Part-time employees shall be entitled pro rata to annual leave, holidays and personal leave as prescribed in Part VI – Leave and Holidays with Pay, Clause 1 - Annual Leave, and Clause 4 - Holidays with Pay hereof.

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4. TRAINEES

This clause shall not have application where a trainee is subject to the National Training Wage (Tasmanian Private Sector) Award.

- (a) Full-time Trainees shall be engaged for a period of 12 months as full-time employees.

PROVIDED that trainees shall be subject to a satisfactory probation period of up to one month. Part-time Traineeships shall be no longer than two years.

- (b) Where possible, a traineeship position should be additional to normal staff numbers.

PROVIDED that no existing weekly employees shall be displaced by a trainee.

- (c) A trainee will receive "on-the-job" training by the employer (or employers) as specified in the Training Agreement and that "off-the-job" training will be provided by a training authority/organisation approved by the Training Authority of Tasmania.

PROVIDED that the total of "on" and "off-the-job" training will not exceed five days per week.

- (d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.

- (e) Time spent "off-the-job" on training shall be allowed without loss of continuity of employment.

- (f) Where the employment of a trainee by an employer is continued after completion of the "Traineeship period", such "Traineeship period" shall be counted as service for the purpose of the award.

- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular office, department, or section, overtime is involved in the operation of that office, department or section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.

- (h) Preference in continuation in employment shall be given to trainees should vacancies occur at the successful completion of the traineeship.

- (i) The union shall be afforded reasonable access to trainees for the purposes of explaining the role and functions of the union.

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- (j) Trainees shall not perform higher duties unless in the course of their traineeship.
- (k) Trainees shall be exempt from action in respect to industrial disputes.

5. TERMINATION OF EMPLOYMENT

- (a) Unless otherwise agreed, employment shall be terminated by four weeks' notice; or the payment or forfeiture of such wages as are equivalent to the period of notice, as the case may be, but this shall not affect the right of the employer to dismiss an employee for misconduct or neglect of duty, in which case wages shall be paid up to the time of dismissal only.
- (b) The employer, in the event of misconduct, may as an alternative to dismissal, suspend an employee without pay. The maximum period of suspension shall be one week. Should the employee not agree to the suspension, the union may refer the matter to the Tasmanian Industrial Commission.

PART III - WAGES AND RELATED MATTERS

1. CLASSIFICATION DESCRIPTORS

GRADE 1

An employee at this grade may be required to:

assist practitioners and support staff by undertaking a range of clerical tasks and duties including mail processing, filing, delivering and retrieving documents, operation of basic office equipment.

An employee engaged as a Clerical Assistant will usually be classified at this level unless duties justifies classification at a higher level.

GRADE 2

An employee at this grade may be required to:

receive clients and visitors, operate main switchboard, receive and relay messages, know roles and functions of other employees and may include a limited range of clerical tasks and duties under supervision.

An employee engaged as a Receptionist and/or Switchboard Operator and/or Administration Clerk will usually be classified at this level unless duties justifies classification at a higher level.

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GRADE 3

An employee at this grade may be required to:

assist administration staff by undertaking a range of clerical tasks and duties including preparation and input of data, filing, preparation of routine reports, basic book-keeping, document retrieval, operation of office equipment, processing of financial documentation with limited supervision.

An employee engaged as a Clerical and Office Administrator will usually be classified at this level unless duties justifies classification at a higher level.

GRADE 4

An employee at this grade may be required to:

- (a) assist practitioners and support staff, administer basic legal files, respond to client enquiries, maintain a diary on behalf of others, produce documents using keyboard skills, co-ordinate the use of a range of office equipment, issue invoices to clients.

An employee engaged as a Legal Assistant will usually be classified at this level unless duties justifies classification at a higher level.

Or

- (b) assist practitioners and support staff by provision of word processing functions including production of complex documents using keyboard skills, maintenance of precedents database.

An employee engaged as a Word Processing Operator will usually be classified at this level unless duties justifies classification at a higher level.

GRADE 5

An employee at this grade may be required to:

Undertake a range of accounts roles in support of practitioners and administrative staff including accounts receivable/payable, payrolls, credit control, reconciliation of accounts and statements.

An employee engaged as a Finance and Accounts Officer will usually be classified at this level unless duties justifies classification at a higher level.

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GRADE 6

An employee at this grade may be required to:

- (a) assist practitioners and support staff by managing complex files, produce complex documents and reports using keyboard skills, interview and respond to clients, manage a diary and arrange appointments, issue invoices to clients, supervision and training of junior legal assistants.

An employee engaged as a Senior Legal Assistant will usually be classified at this level unless duties justifies classification at a higher level.

Or

- (b) assist practitioners with property transfers including: obtain various searches and certificates, co-ordinate settlements with other parties, attend to stamping and registration of dealings.

An employee engaged as a Conveyancing Clerk will usually be classified at this level unless duties justifies classification at a higher level.

Or

- (c) supervise a range of clerical and administration functions, supervision and training of junior clerical staff, preparation of financial reports and budgets, administer staff and salary records, maintain and oversee operation of trust account.

An employee engaged as an Administration Supervisor will usually be classified at this level unless duties justifies classification at a higher level.

Or

- (d) Provide support to practitioners and other staff in the operation of all computer software and hardware systems and supervise any IT Support Staff. An employee engaged as an Information Technology Administrator will usually be classified at this level unless duties justifies classification at a higher level.

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2. WAGE RATES

(a) Adult employees

Full time employees classified under this award shall be paid the rates specified in this clause for the relevant classification. Part time employees shall be paid on a pro-rata on hours worked.

	Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
Grade 1	90	375.50	201.70	577.20
Grade 2	95	396.30	201.70	598.00
Grade 3	105	438.10	203.70	641.80
Grade 4	110	458.90	203.70	662.60
Grade 5	120	500.60	201.70	702.30
Grade 6	125	521.50	199.70	721.20

(b) Junior Employees

The minimum weekly wage rate that may be paid by employers to junior employees shall be:

	Percentage of Grade 1
	%
16 to 17 years of age	50
17 to 18 years of age	55
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(c) Translation Schedule

From the first full pay period on or after 11 December 2000 employees occupying classifications in the Barristers and Solicitors Award shall be re-classified to one of the appropriate levels as set out below:

Existing classification	Translates to
Clerk Grade 1	
1st year adult experience	Grade 1
3rd year adult experience	Grade 2

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Clerk Grade 2 1st year adult experience	Grade 3
Law Clerk Grade 1 1st year adult experience	Grade 4
Law Clerk Grade 3 1st year adult experience	Grade 6
Accountant	Grade 5 or Grade 6 Depending on duties

- (d) No employee will have his or her salary reduced as a result of translation to the classifications described in Part III - Wages and Related Matters, Clause 1 - Classification Descriptors.

3. SUPPORTED WAGE SYSTEM

- (a) Eligibility Criteria

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

PROVIDED that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

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

- (b) For the Purposes of this Subclause:

'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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'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.

'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.

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

(c) Supported Wage Rates

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

Assessed capacity (paragraph (d))	% of prescribed award rate
10%	10
20%	20
30%	30
40%	40
50%	50
60%	60
70%	70
80%	80
90%	90

PROVIDED that the minimum amount payable shall be not less than \$61 per week.

(d) 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:

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

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(e) Lodgement of Assessment Instrument

- (i) 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.
- (ii) 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 ten working days.

(f) 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.

(g) 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.

(h) 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.

(i) Trial Period

- (i) 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.
- (ii) 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 (d) and (e).

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- (iii) 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.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) 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 (c) hereof.

4. PAYMENT OF WAGES

- (a) Wages shall be paid at least once in every fortnight during the employer's time.
- (b) Where an employee's employment is terminated all moneys due shall be paid immediately on the employee ceasing work.

5. SUPERANNUATION

- (a) The employer shall make a contribution in accordance with the provisions of the relevant Federal Superannuation Guarantee Legislation into a superannuation fund approved under the legislation for all eligible employees.
- (b) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
- (c) Eligible Employees
 - (i) An eligible employee shall mean an employee with at least three months' continuous service with an employer subject to this award.
 - (ii) In the case of eligible casual and part-time employees, contributions shall be made where employees work at least 37.1/2 hours during a fund-billing month.
- (d) Fund

Contributions shall be made into TASPLAN, CARE or any other Superannuation Fund.

PROVIDED that the fund conforms with the requirements of the relevant Federal Superannuation Guarantee Legislation.

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6. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by Clause 3 - Supported Wage System is \$527.10 per week.

(ii) 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 (b)(i).

(iii) 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 (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

(ii) 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 (b)(i).

(d) 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.

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(i) applies to all work in ordinary hours;

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- (ii) 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
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2007 State Wage Case Decision (T.12940 of 2007) and all previous safety net and state wage case adjustments.

PART IV - ALLOWANCES

1. TEA MONEY

- (a) An employee required to work overtime for more than one and a half hours without being notified the previous day shall be supplied with an adequate meal by the employer or be paid \$14.10 meal money.
- (b) The payment prescribed in subclause (a) shall be made on the day on which the overtime is worked.

2. TRAVELLING TIME

When an employee is required to work overtime beyond a time when public transport is available, the employer shall be required to provide transport or meet the cost of transport to the employee travelling to his or her home. Where an employee uses his or her own means of transport the employee shall be paid a travelling allowance of 9.5 cents per kilometre travelled on the return to home by the most direct road route.

PART V - HOURS OF WORK, PENALTY PAYMENTS, SHIFT WORK AND OVERTIME

1. HOURS

The hours of work shall be an average of 37.5 to be worked over a four-week cycle.

The hours shall be worked between Monday and Friday between 7.00 am and 6.30 pm on one of the following methods:

- (a) 7.5 hours per day
- (b) Four days of 8 hours and one day of 5.5 hours
- (c) 19-day month

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- (d) In a manner which will enable an employee to accumulate up to a maximum of four rostered days off to be taken between Christmas and New Year in circumstances whereby it is the practice of the employer to close for that period.

PROVIDED that in the absence of agreement between the employer and employees concerned, the method adopted shall be (a) above.

PROVIDED FURTHER that in the event that option (c) above is adopted, the ordinary hours of work shall be an average of 38 per week over a four-week cycle.

Subject to the average of 37.5 hours over a four-week cycle, by agreement between an employer and an employee, up to 10 hours may be worked on any day at ordinary time.

2. OVERTIME

- (a) Subject to the exceptions specified in Clause 1 - Hours of this Part, overtime at the rate of time and a half for the first four hours and double time thereafter shall be paid for all time worked in excess of eight hours per day or 150 hours (152 hours in the case of a nineteen day month) in a four week cycle.
- (b) Junior - No employee under the age of 18 years shall be required to work overtime unless he or she so desires.
- (c) Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime.

PROVIDED that such time off shall be paid at the ordinary rate.

- (d) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (e) Requirement to work reasonable overtime
- (i) Subject to clause (ii) an employer may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
- (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;

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- (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (5) any other relevant matter.

3. MAKE UP TIME

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of 'make up time' provided that:

- (a) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (b) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (c) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (d) Once a decision has been taken to introduce an enterprise system of 'make up time', in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
- (e) An employer shall record 'make up time' arrangements in the relevant time and wages book at each time this provision is used.

4. REST PERIOD

Employees shall be entitled to a morning and afternoon tea break. Such break shall be taken at the workstation without undue interruption to the workflow.

5. ROSTERED DAY OFF

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

- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.

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- (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (d) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (e) Once a decision has been taken to introduce an enterprise system of Rostered Days Off flexibility, in accordance with this clause, its terms must be set on in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
- (f) An employer shall record Rostered Days Off arrangements in the relevant time and wages book at each time this provision is used.

PART VI - LEAVE AND HOLIDAYS WITH PAY

1. ANNUAL LEAVE

- (a) Period of Leave

A period of 150 hours paid leave shall be allowed annually to an employee after 12 months' continuous service. In subsequent years the 12 months' continuous service shall include the period of annual leave.

- (b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 4 - Holidays with Pay hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave, time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

- (c) Broken Leave

Annual leave may be given and taken in two periods, the lesser of which shall not be less than five days.

PROVIDED that by agreement between the employer and employee, annual leave may be taken in any combination.

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(d) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous, notwithstanding -

- (i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) any absence from work on account of personal sickness, accident or on account of leave lawfully allowed under this award or granted by the employer;
- (iii) any absence with reasonable cause, that shall be agreed upon between the employee and the employer;

or

In cases of personal sickness or accident or absence with reasonable cause, the employee to become entitled to the benefit of this subclause shall inform the employer, if practicable, within 24 hours of the commencement of such absence of his or her inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of absence.

Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for the purpose of this clause unless the employer during the absence or within 14 days of the termination of the absence or in the case of false information given to the employer within 14 days of the employer ascertaining the true reason, notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

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

(e) Calculation of Service

Service with the same employer before the date of this award shall be taken into consideration for the purpose of calculating annual leave, but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or a payment in lieu thereof has been allowed or made under the previous award.

The annual leave shall be allowed at the rate of one-thirteenth of a week in respect of each completed week of continuous service.

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The period of annual leave to be allowed under this subclause shall be calculated to the nearest day, any broken part of a day in the result not exceeding half a day to be disregarded.

Where a business is transmitted, assigned or otherwise transferred from one employer to another employer, and an employee who was an employee of the transmitter becomes the employee of the transmittee, service with the transmitter shall be deemed to be service with the transmittee, for the purpose of this clause.

(f) Payment in Lieu Prohibited

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

(g) Time of Taking Leave

Annual leave shall be given and taken at a time after the right to annual leave has accrued.

(h) Leave Allowed before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case, a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is lawfully discharged from the service of the employer before completing the 12 months' continuous service in respect of which leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 4 - Holidays with Pay hereof.

(i) Payment for Period of Leave

Unless the employer and employee otherwise agree, each employee before going on leave shall be paid the amount of wage he or she would have received in respect of the ordinary time which he or she would have worked had he or she not been on leave during the relevant period.

(j) Proportionate Leave on Termination of Service

If after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his or her employment, or employment is terminated by the employer, the employee shall be paid at the ordinary rate of wage as follows:

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one thirteenth of a week's wage in respect of each completed week of continuous service.

(k) Annual Leave Loading

In addition to the payment prescribed under subclause (i) hereof each employee shall receive a loading of 17.½% on the payment for annual leave. Such loading shall not apply to proportionate leave on termination of service.

2. 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.

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. Casual Employees are not entitled to any payment for the period of non-attendance.

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- (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.

3. 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, Easter Tuesday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day. By agreement between the employer and an employee an alternative day may be observed in lieu of any of the holidays herein specified. This shall not apply in the case of Christmas Day, Boxing Day, New Years Day and Good Friday.
- (b) **'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.

4. PAYMENT FOR HOLIDAYS

- (a) Payment for the holidays mentioned in Clause 4 - Holidays with Pay hereof, which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, where if it were not for such holiday, he or she would have been at work.
- (b) All work performed on any of the prescribed holidays in Clause 4 - Holidays with Pay hereof or on a Saturday or a Sunday shall be paid at the rate of double time with a minimum payment as for three hours worked.

5. 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

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who has previously lived continuously with the employee for a period of six months or more.

- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
 - (1) any period of leave taken in accordance with this clause;
 - (2) any period of part-time employment worked in accordance with this clause; or
 - (3) any period of leave or absence authorised by the employer or by the award.
 - (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
 - (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
 - (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
 - (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
 - (vii) **'Spouse'** includes a de facto or a former spouse.
- (b) Entitlement
- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
 - (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

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- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special Maternity Leave
 - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.

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- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

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

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
 - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
 - (3) a statutory declaration stating:
 - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.

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- (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

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

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(f) Parental Leave and Other Entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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

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(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

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(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.

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(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

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

(i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.

(iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

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

(j) Redundancy

(i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

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

(k) Right To Request Variation To Parental Leave Provision

(i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

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- (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) **Communication During Parental Leave**

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

6. PERSONAL LEAVE

- (a) 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) - Casual Employees - Caring Responsibilities.

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Definitions

The term '**immediate family**' includes:

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

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) the employee shall not be entitled in any year to personal leave credit in excess of 75 hours of ordinary working time.

PROVIDED that during the first three months of employment, personal leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

- (c) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (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 or her 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 (f)(i), beyond the limit set out in paragraph (f)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(g) Employee Must Give Notice

The employee shall where practicable within 30 minutes of the commencement of such absence, inform the employer of his or her inability to attend for work and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.

(h) Evidence Supporting Claim

- (i) The employee shall prove to the satisfaction of the employer, that he or she 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.

PART VII - DISPUTE RESOLUTION

1. EMPLOYEE GRIEVANCE

- (a) Any employee grievance other than that arising from the employer's concern about an employee's work performance or conduct shall be dealt with in the first instance, the employee shall attempt to resolve the grievance with his or her immediate supervisor or employer.
- (b) Where such an attempt at settlement has failed, or where the grievance is of such a nature that direct discussion with the immediate supervisor would be inappropriate, the employee may notify an authorised representative of the union. The union may take the matter up with the employer and a meeting shall be arranged to take place as soon as practical after notification to the employer of the grievance.

2. EMPLOYEE COUNSELLING AND DISCIPLINARY PROCEDURES

Employer concerns about work performance or conduct shall be dealt with in a manner which :

- (a) is consistent with the principles of natural justice, i.e. the employee is made aware of the concern and the required change in conduct or performance; given a reasonable opportunity to improve conduct or performance and the review of conduct or performance is fair;
- (b) clearly identify the person or persons with the authority to address such concerns;
- (c) provide for representation by the appropriate union if requested by the employee;

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- (d) provide for work performance or conduct counselling in the event of any employer concern;
- (e) provide for a written warning where disciplinary action or termination is proposed; which shall:
 - (i) outline the employer's concerns and the facts relied on to justify the warning;
 - (ii) outline the change in conduct or performance required;
 - (iii) give the employee a reasonable and specified period to change performance or conduct;
 - (iv) outline the action proposed if conduct or performance is not changed; and
 - (v) a copy of the warning sent promptly to the employee's representative, if requested by the employee

3. DISCIPLINARY ACTION AND TERMINATION OF EMPLOYMENT

Except in circumstances justifying summary dismissal, no action shall be taken by the employer to discipline or terminate the employment of the employee on the grounds of employee performance or conduct unless the procedures consistent with this Part have first been followed.

While the above procedure is being followed work shall continue as normal where it is agreed that there is an existing custom or practice. No party shall be prejudiced as to the final settlement by continuation of work in accordance with this subclause.

Nothing in this procedure shall restrict the employer's right to summarily dismiss an employee where this is justified.

In the event that conciliation fails to resolve the dispute, either party may refer the matter to the Tasmanian Industrial Commission.

PART VIII - AWARD COMPLIANCE AND UNION RELATED MATTERS

1. ENTERPRISE AGREEMENTS

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an enterprise 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:

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- (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.

2. STRUCTURAL EFFICIENCY

The parties to this award are committed to co-operating positively to increase the efficiency and productivity of enterprises and to enhance the career opportunities and job security of employees subject to the award.

Consistent with this objective consultative mechanisms shall be established appropriate to the size, structure and needs of the enterprise.

James P McAlpine
COMMISSIONER

17 July 2007

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