

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T13142 of 2008)

Private Sector Awards

Minister administering the *State Service Act 2000*

(T13143 of 2008)

Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

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

ORDER BY CONSENT -

CLEANING AND PROPERTY SERVICES AWARD

No. 1 of 2008

(Consolidated)

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

1. TITLE

This award shall be known as the "Cleaning and Property Services Award".

2. SCOPE

This award is established in respect of the property service industry which includes, without limiting the generality thereof, the provision of cleaning, pollution control, general maintenance, repair and ancillary security services in both domestic and non-domestic premises.

3. ARRANGEMENT

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4. DATE OF OPERATION

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

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Cleaning and Property Services Award No 1 of 2007 (Consolidated).

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:

the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;

- (d) the following organisations of employers in respect of whom award interest has been determined:
 - (i) The Retail Traders Association of Tasmania, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
 - (ii) the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'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 local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

'Union' means the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch.

8. WAGE RATES

(a) An adult employee's weekly rate is inclusive of the base rate of pay set out hereunder.

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
Property Service Employee	\$	\$	\$
Grade 1	364.60	220.70	585.30
Grade 2	385.50	220.70	606.20
Grade 3	417.20	222.70	639.90

(b) Classifications

For the purposes of subclause (a) hereof, an employee shall be assigned to the appropriate classification provided they are appointed by the employer to perform tasks and duties and undertake responsibilities within the scope of the indicative tasks and duties and responsibilities and the definition of that classification grade and the employee has competency in the necessary skills to perform those tasks and duties at the standard required.

The classification grades are defined as follows:

Property Service Employee Grade I

(i) Point of Entry

New employee

(ii) Description

Means an employee who performs generic cleaning tasks to restore or maintain premises by the removal of soiling and waste to a clean condition, provided that a Property Service Employee Grade I shall also mean a person who is employed by a Contractor in a private residence and/or establishment, to perform work of a hygienic nature including but not limited to cleaning and washing and in addition includes an employee engaged to perform basic office duties indicative of their grade.

(iii) Tasks, Duties and Responsibilities

Indicative of the tasks, duties and responsibilities which an employee at this level may perform are the following:

- Cleaning
- General/hygiene/domestic/industrial/commercial/Retail etc
- Refuse removal
- Use of chemicals
- Locking doors and windows for access and egress to ensure the building is secure
- Transportation
- Basic keyboard record keeping and receptionist duties

(iv) Induction Programme

An employee at this level shall undertake an internal induction programme which may include information on the enterprise, conditions of employment, introduction to other workers, training and career path opportunities, occupational health and safety, quality control, work and documentation procedures, personal presentation and use and care of machinery and/or equipment.

(v) Promotional Criteria

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

Property Service Employee Grade II

(i) Point of Entry

- Property Service Employee Grade I
- Completion of required training module

(ii) Description

Means an employee who utilises the skills of Property Service Employee Grade I and who in addition regularly utilises cleaning skills and methods that are of a specialist nature.

(iii) Tasks, Duties and Responsibilities

In addition to the tasks of Property Service Employee Grade I the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- Client liaison/public relations eg. minor quoting
- Ordering and receiving of supplies and materials
- Specialised carpet cleaning
- Steam and pressure cleaning
- Window cleaning from a suspended apparatus
- Basic maintenance
- Securing premises as part of the task
- Intermediate keyboard skills and performs administrative/secretarial duties

(iv) Promotional Criteria

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

Property Service Employee Grade III

(i) Point of Entry

- Property Service Employee Grade II
- Completion of required training module

(ii) Description

Means an employee who utilises the skills of Property Service Employee Grade II and in addition is a principal supervisor responsible for employees at Property Service Employee Grades I and II levels and/or generally superintends property including property maintenance and quality control.

(iii) Tasks, Duties and Responsibilities

In addition to the tasks of Property Service Employee Grade II the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- Implementing and overseeing quality control techniques and procedures
- Use of a well developed level of inter-personal and communicative skills
- Supervises, directs and guides other employees and assists in the provision of training and induction
- Exercises discretion within the scope of this grade
- Liaison with management, staff and clients
- Administrative and clerical duties required to undertake the tasks and duties of this level
- Duties requiring certified trade skills
- Co-ordination of other employees
- Detailed contract estimating
- Subject to management direction processes pay-roll reconciliation, completes profit and loss accounts and other general accounting duties
- Advanced keyboard duties incidental to other administrative tasks

(c) Leading Hands

An employee engaged as a Property Service Employee Grade I or II who is appointed by the employer as a leading hand shall be paid per week the following applicable allowance in addition to the classification rate:

	Amount Per Week \$
In charge of 5 or less employees	17.00
In charge of 6 to 10 employees	21.90
In charge of more than 10 employees	29.20

PROVIDED that an employee engaged as a Property Service Employee Grade III shall not be entitled to receive a leading hand allowance.

(d) Supported Wage System

(i) Eligibility Criteria

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

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

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

'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.

'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.

(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 (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 \$66 per week.

(iv) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

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

(v) Lodgment of Assessment Instrument

- (1) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (2) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(vi) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(vii) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(viii) Workplace Adjustment

An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(ix) Trial Period

- (1) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 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 (iv) and (v).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$66 per week or such greater amount as is agreed from time to time between the parties.
- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (iii) hereof.

(e) Minimum Wage

(i) Minimum Wage

No employee shall be paid less than the minimum wage.

(ii) Amount of Adult Minimum Wage

(1) The minimum wage for full-time adult employees not covered by subclause (d) - Supported Wage System is \$546.10 per week.

(2) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subparagraph (ii)(1).

(3) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subparagraph (ii)(1) according to the number of hours worked.

(iii) How the Minimum Wage Applies to Juniors

(1) The wage rates provided for juniors by this award continue to apply unless the amount determined under subparagraph (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 subparagraph (ii)(1).

(iv) Application of Minimum Wage to Certain Employees

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

(v) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(1) applies to all work in ordinary hours;

- (2) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
- (3) is inclusive of the arbitrated safety net adjustment provided by the July 2008 State Wage Case Decision (T13142 of 2008) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days leave, exclusive of days prescribed as holidays in Clause 16 - Holidays with Pay, of this award, shall be allowed annually to an employee other than a casual after 12 months continuous service (less the period of annual leave).

(b) Calculation of Continuous Service

- (i) **'12 months continuous service'**, for the purposes of this award shall mean 12 months from the commencement of employment. Such 12 months shall not be affected by the number of hours worked each week.
- (ii) Continuous service shall not be deemed to have been broken because of:
 - (1) absences of up to 91 days resulting from accidents, or illnesses which are covered by medical certificates, in accordance with Clause 23 - Personal Leave of this award;
 - (2) absences of up to one month for any cause for which leave has been granted by the employer.

(c) Time of Taking Leave

Annual leave shall be taken at a time mutually agreed upon by the employer and the employee and in the absence of agreement at a time fixed by the employer after at least one month's notice to the employee.

Annual leave shall be taken within 12 months from the date when the right to annual leave accrued.

(d) Broken Leave

Annual leave shall be taken on one consecutive period or if the employer and employee agree, in two or more periods provided that:

- (i) one period shall be not less than seven consecutive days, i.e. eight working days;

(ii) there shall be a maximum of five single day periods in any 12 months.

(e) Payment for Period of Leave

(i) Subject to the provisions of paragraph (ii) of this subclause, an employee before going on leave shall be paid the amount of wages he/she would have received in respect of the hours excluding overtime which he/she would have worked had he/she not been on leave during the relevant period. In addition thereto, he/she shall be paid a loading of 17.5 per cent.

(ii) In the event of an employee's ordinary weekly hours of work having varied in the period during which the annual leave has accrued the number of hours per week on which leave payments are calculated shall be the average number of hours per week worked during the said period of accrual.

(f) 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 discharged from the service of the employer before completing the 12 months continuous service in respect of which the 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 1/12th 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 16 - Holidays with Pay of this award.

(g) Payment in Lieu Prohibited

Payment in lieu of annual leave shall not be made by an employer nor accepted by an employee except in accordance with all the requirements of this clause.

(h) An employee shall not work for any other employer covered by this award during the period he or she is on paid annual leave.

(i) Annual Leave Record

Every employer shall keep or cause to be kept an annual leave record showing the date of commencement of employment, the date on which the last leave became due and the date on which the last leave was taken.

(j) Proportionate Leave on Termination of Service

(i) Where an employee terminates the employment, or his/her employment is terminated by the employer before the expiration of any 12 monthly qualifying period, payment shall be made on the basis of:

(1) 4/52nd of a week's wages for each completed week of continuous service.

(2) In the case of an employee whose service is terminated by the employer other than under the provisions of Clause 13 - Contract of Employment, subclause (e) of this award, a loading of 17.5 per cent on all pro rata annual leave due shall be paid.

(ii) Where an employee has more than 12 months continuous service and that service is terminated by the employer through no fault of the employee, the employee shall be paid pro rata annual leave loading.

10. BEREAVEMENT LEAVE

(a) Paid Leave Entitlement

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

(b) Unpaid Bereavement Leave

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

(c) Casual Employees

(i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

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

11. CALL BACK

Any employee required to attend the employer's premises for any reason other than carrying out his/her rostered duties after leaving his/her place of employment (whether notified before or after leaving his/her place of employment) shall be paid a minimum of four hours pay at the appropriate rate for each such attendance. Except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job he/she was recalled to perform is completed within a shorter period.

PROVIDED that this clause shall not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

PROVIDED FURTHER that such employee shall be given at least eight hours off duty before he/she is required to resume his/her ordinary hours. If such employee is requested to resume duty before eight hours rest is given he/she shall be paid double time until he/she has been relieved from duty for a period of eight hours.

12. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to cooperating positively to increase the efficiency, productivity and competitiveness of the industry and establishments covered by Clause 2 - Scope and to enhance the career opportunities and job security of employees in this industry.
- (b) At each enterprise, the employer, the employees and the relevant union, shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise. Measures raised by the employer, employees or union for consideration with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

13. CONTRACT OF EMPLOYMENT

- (a) Except in the case of casuals, employment under this award shall be by the week.

- (b) Casual employees shall be engaged by the hour.
- (c) Except in the case of casuals, employment may be terminated only by the giving of one week's notice by either party or by the payment or forfeiture of one week's wages, as the case may be.
- (d) Casual employment may be terminated by one hour's notice on either side.
- (e) Nothing in this clause shall limit the right of the employer to instantly dismiss an employee for malingering, misconduct or neglect of duty provided that such malingering, misconduct or neglect of duty warrants instant dismissal.
- (f)
 - (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
 - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
 - (iii) Any direction issued by an employer pursuant to paragraphs (i) and (ii) herein shall be consistent with the employee's responsibilities to provide a safe and healthy working environment.

14. FIRST AID

Where an employee is a qualified first aid attendant and is authorised to carry out the duties of a qualified first aid attendant, the employee shall be paid an additional amount, payable at the rate of \$8.10 per week of 38 hours.

15. GENERAL CONDITIONS

- (a) Clean overalls or coveralls shall be supplied to full-time and part-time employees on the completion of one month's service. Such overalls or coveralls shall remain the property of the employer.

It is the responsibility of the employer to ensure that the overalls or coveralls are kept in good repair at all times.

- (b) Boiling Water

Hot water shall be provided by the employer where practicable.

(c) Rubber Boots

Where employees are required to work in water they shall be supplied with rubber boots which shall remain the property of the employer.

(d) Rubber Gloves

Where employees are required to clean toilets, or to use acids or other injurious substances they shall be supplied with rubber gloves, which shall remain the property of the employer.

(e) Protective Clothing

Where an employee is required to work in wet weather he/she shall be supplied by the employer with suitable wet weather clothing including a waterproof coat or cape, waterproof hat, trousers and boots; such clothing shall remain the property of the employer.

16. HOLIDAYS WITH PAY

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

(ii) Where any of the aforementioned holidays fall on a Saturday, Sunday or Rostered Day Off and are observed on the Saturday, Sunday or Rostered Day Off respectively, then the following ordinary working day shall be regarded as a holiday for the purposes of this award.

(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/she had been at work.

(c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.

(d) Subject to agreement being reached between the employer and the employee/s concerned, any of the holidays mentioned in paragraph (a)(i) hereof may be worked at ordinary time and another working day substituted for the holiday concerned.

17. HOURS OF WORK (FULL-TIME EMPLOYEES ONLY)

(a) Ordinary Hours of Work

- (i) Part-time and casual employees are excluded from the provisions of this clause.
- (ii) Ordinary hours of work shall be an average of 38 per week to be worked on any day of the week, Saturday and Sunday inclusive in one of the following manners:
 - (1) 38 hours within a work cycle of one week; or
 - (2) 76 hours within a work cycle of two weeks; or
 - (3) 114 hours within a work cycle of three weeks; or
 - (4) 152 hours within a work cycle of four weeks.

Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

- (iii) Ordinary hours may be worked in not more than eight hours on any day but may be worked in one or two periods.

PROVIDED that unless agreement is otherwise reached between the employer and the union a shift worked in two periods shall not exceed a spread of 14 hours, commencing before 6.00am or finishing after 10.00pm.

PROVIDED FURTHER that the employer and the employee/s in any section or sections may agree that the ordinary working hours are to exceed eight on any day to a maximum of 12 on any day, thus averaging a 38 hour week at greater frequency.

(b) Payment for Ordinary Hours of Work

Full-time employees shall be paid the wage prescribed for a week of 38 hours as prescribed in Clause 8 - Wage Rates and in addition thereto such overtime and other penalty rates that may have occurred during the relevant period.

(c) Day Workers

Subject to the provisions of subclause (a) hereof the ordinary hours for day workers shall extend from 6.00am to 6.00pm on any day.

(d) Shift Workers

Subject to subclause (a) hereof an employee rostered to work ordinary hours on shift work Monday to Friday inclusive shall be paid as follows:

(i) Shifts - General

Payment of a 15 per cent premium for a shift finishing after 6.00pm or commencing before 6.00am.

PROVIDED that where a night shift, does not rotate or alternate with another shift or daywork so as to give the employee at least one third of his or her ordinary hours not working a night shift, then a 30 per cent premium shall be paid for working a night shift.

For the purposes of this subclause a '**night shift**' shall mean a shift of ordinary hours the majority of which falls between midnight and 6.00am.

(ii) Broken Shift

Payment of a 20 per cent premium for a shift worked in two periods and in addition the amount prescribed in Clause 31 - Travelling Time and Expenses, shall be paid.

PROVIDED that the period of a meal break shall be deemed a continuation of the shift.

Where one of these two periods extends beyond four hours, a paid crib break of 20 minutes shall be given in lieu of the meal interval entitlement of Clause 18 - Meal and Meal Allowance and the rest period entitlement of Clause 25 - Rest Period of this award.

PROVIDED FURTHER that unless written agreement is otherwise reached between the employer and the union a shift worked in two periods shall not exceed a spread of 14 hours, commencing before 6.00am or finishing after 10.00pm.

(iii) Shift Premiums

The premiums prescribed by this subclause shall be paid in addition to the appropriate rate of pay prescribed in Clause 8 - Wage Rates.

(e) Rate for Ordinary Hours on Saturday, Sunday and Public Holidays

For employees whose ordinary hours are worked on a Saturday, Sunday or Public Holiday payment shall be made subject to the following prescription provided that in the case of shift workers, the premium prescribed in subclause (c) hereof shall not apply:

(i) Saturday Work

Between midnight on Friday and midnight on Saturday payment shall be at time and a half rates.

(ii) Sunday Work

Between midnight on Saturday and midnight on Sunday payment shall be at double time.

(iii) Public Holiday Work

Between midnight on the preceding day and midnight on the day of the public holiday payment shall be at double time and one half.

(iv) Full-time employees required to work on a Sunday or a holiday as prescribed in Clause 16 - Holidays with Pay of this award shall receive a minimum of three hours pay at the appropriate rate.

(f) Rostered Time Off

(i) An employee shall be entitled to two consecutive days off duty in any week Saturday and Sunday inclusive provided that where an employer requires the employee to work on either of these days the employee shall be paid in accordance with Clause 19 - Overtime.

PROVIDED that these days shall be in addition to any time off arising out of the method of working a 38 hour week.

(ii) Where the method of working a 38 hour week provides for a rostered day off (RDO) duty in any work cycle the following provisions shall apply:

(1) An RDO shall be in addition to the days off prescribed in subclause (a) hereof.

(2) Substitute RDO's

An RDO may be worked and the RDO substituted for another working day provided the employer and employee/s concerned so agree.

(3) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

(4) Notice of RDO's

Except where an RDO is substituted for another working day the employer shall provide an employee with at least four weeks notice of the week day that is to be observed as the RDO.

(5) Accumulation of RDO's

Where an employer and employee/s concerned so agree RDO's may be accumulated to a maximum of 10 days in any year and taken at a mutually agreed time.

(6) In the absence of agreement at site level the observance of the RDO will occur by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

(7) Sickness

An employee shall not be entitled to claim personal leave payment for an RDO nor will the employee's sick pay entitlement be reduced as a result of the sickness or injury on that day.

(g) 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:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) An employer shall record make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

18. MEAL AND MEAL ALLOWANCE

- (a) A meal interval of at least 30 minutes or not more than one hour shall be allowed to an employee after the completion of at least three hours work and before the completion of five hours work.

- (b) An employee who is required to work overtime for more than two hours shall be paid a meal allowance of \$14.60.

19. OVERTIME

- (a) For all time of duty in excess of, or outside of, ordinary hours the rates of pay shall be time and one-half for the first two hours and double time thereafter. In computing overtime each day's work shall stand alone.
- (b) For the purposes of computing overtime the ordinary rate of pay shall be determined by dividing the weekly rate of pay by 38.
- (c)
 - (i) Time off in lieu of payment for overtime work may be taken by an employee. The amount of time off shall be calculated on the basis of the appropriate overtime rate. This alternative to the payment of penalty rates shall only apply by agreement between the employer and the employee concerned.
 - (ii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (d) For the purpose of determining overtime entitlements of an employee, any employee who works 10 minutes or more past the time fixed for ceasing work shall be paid overtime for all time worked after the time fixed for ceasing work.
- (e) Overtime worked immediately prior to the employee's usual starting time for work shall be paid as overtime but the time so worked shall be deemed to be part of the employee's ordinary hours of work.
- (f) Requirement to Work Reasonable Overtime
 - (i) Subject to paragraph (ii) of this subclause and paragraph (c)(i) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;

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

20. PARENTAL LEAVE

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

(a) Definitions

For the purposes of this clause:

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

(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

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

work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(vi) Special Maternity Leave

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

(vii) Transfer to a safe job

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

(d) Paternity Leave

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

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

(e) Adoption leave

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

requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.

- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if

the employee was still working full-time, in the position held prior to taking leave.

- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.
- (B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or

proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

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

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.

- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
 - (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
 - (iv) Unbroken service as a replacement employee shall be treated as continuous service.
 - (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (i) Return to Former Position after a Period of Parental Leave or Part Time Work

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

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

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

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for

consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

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

(k) Right To Request Variation To Parental Leave Provision

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

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

to assist the employee in reconciling work and parental responsibilities.

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

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to

return to work and whether the employee intends to request to return to work on a part-time basis.

- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

21. PART-TIME AND CASUAL EMPLOYEES

(a) Definitions

(i) Part-time Employees

A part-time employee is one engaged to regularly work for less hours per day or week than those prescribed for a full-time employee.

(ii) Casual Employees

A casual employee is one who is employed on a casual basis and shall not include an employee engaged as a part-time employee.

(b) Ordinary Hours of Employment

On engagement, an employee's constant number of hours for any nominated day and per week shall be established between the employer and employee pursuant to the contract of service. Once the hours have been established they shall not be varied by either party otherwise than:

- (i) the giving of at least one week's notice; or
- (ii) by mutual consent.

Nothing in this clause shall have the effect so as to preclude an employee from receiving any other rights existing under this award.

In no circumstances shall an employee be required to work a shift in more than two periods.

The ordinary hours of work for a part-time or casual employee shall not exceed eight on any day and may be worked in one or two periods.

PROVIDED that the employer and employees concerned in any section or sections may agree that the ordinary hours of work may exceed eight hours on any day to a maximum of 12 hours provided further that the ordinary hours worked in any week shall not exceed 38 hours.

(c) Payment for Ordinary Hours of Work

Part-time employees shall be paid the wage prescribed for the employee's constant number of hours for each week that the employee is ready, willing and available for work during the hours prescribed and in addition thereto such overtime rates that may have occurred during the relevant period.

Subject to subclause (b) hereof a part-time or casual employee for working ordinary hours shall be paid per hour in accordance with the following scale calculated for the work performed subject to Clause 8 - Wage Rates.

(i) Part-time Employees		(ii) Casual Employees	
Day	Percentage of Appropriate Weekly Rate	Day	Percentage of Appropriate Weekly Rate
Monday to Friday	3.3	Monday to Friday	4
Saturday	4.3	Saturday	5.3
Sunday	5.8	Sunday	7
Holiday	7.2	Holiday	8.8

PROVIDED that hourly rates are to be calculated to the nearest whole cent with fractions less than 0.5 cents being disregarded.

PROVIDED FURTHER that the rate of payment specified in this subclause for a holiday shall refer to work performed on any of the days specified in Clause 16 - Holidays with Pay subject to provisions of subclause (d) of that clause.

(d) Minimum Start

A part-time or casual employee shall be engaged for a minimum period of two hours for each separate engagement at the appropriate rate of pay, provided that in exceptional circumstances the employer may, with the agreement of the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, engage an employee for a lesser number of hours than two hours as prescribed herein.

(e) Overtime - Part-time and Casual Employees

(i) A part-time or casual employee required to work in excess of the ordinary hours of work specified in subclause (b) hereof or in excess of five consecutive days in one week period shall be paid per hour in accordance with the following scale calculated for the work performed subject to Clause 8 - Wage Rates.

(ii) Part-time employees	Percentage of Appropriate Rate
Day	
Monday to Saturday First two hours of day or shift	4.3
Thereafter	5.8
6.00pm Saturday to midnight Sunday	5.8
Public Holiday	7.2
 (iii) Casual Employees	
Monday to Saturday First two hours of day or shift	5.3
Thereafter	7.0
6.00pm Saturday to midnight Sunday	7.0
Public Holiday	8.8

(iv) Time Off in Lieu

Time off in lieu of payment for overtime work may be taken by an employee. The amount of time off shall be calculated in accordance with the scale set out in paragraphs (ii) and (iii) of this subclause. This alternative to the payment of overtime rates shall only apply by agreement between the employer and the employee/s concerned.

(v) Overtime Prior to Start of Work

Overtime worked immediately prior to the employee's usual starting time for work shall be paid as overtime but the time so worked shall be deemed to be part of the employee's ordinary hours of work.

(vi) For the purpose of determining overtime entitlements of an employee, any employee who works 10 minutes or more past the time fixed for ceasing work shall be paid overtime for all time worked after the time fixed for ceasing work.

(vii) In computing overtime each day's work shall stand alone.

(f) 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:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) An employer shall record make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

22. PAYMENT OF WAGES

The employer shall specify a time and place at which wages and other monies are to be paid to the employees other than employees engaged for less than one week. The time so specified shall not be more than 48 hours from the time when such wages become due and shall not be later than Thursday in the week. Any employee who is not paid at the time so specified shall be deemed to be working during the time he is kept waiting. Casual employees shall be paid within one hour of the termination of the employment.

Payment may be made weekly or fortnightly as agreed between the employer and the employee.

Such payment shall be in cash, or by cheque or by direct bank deposit into an account nominated by the employee. The employer may determine the method of payment.

Where payment is to be made by cheque or direct bank deposit and such cheque is not met on presentation such bank deposit is not made at the time specified, otherwise than in circumstances beyond the control of the employer waiting time shall be paid.

23. PERSONAL LEAVE

The provisions of this clause apply to an employee, other than one engaged as a casual employee. The entitlements of casual employees are set out in subclause (i) – Casual Employees – Caring Responsibilities.

(a) Definitions

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

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

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) The employee shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of two weeks of ordinary working time.
- (iii) For the purposes of administering paragraph (b)(ii) above an employer may within one month of this award coming into operation or within two weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (iv) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (b)(ii) 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 prescribed herein shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.

(v) 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.

(c) Personal Leave for Personal Injury or Sickness

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

(d) Personal Leave 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.

(e) Employee Must Give Notice

The employee shall, prior to the commencement of such absence, inform the employer of the 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. Where such notification is not given, the employer shall be entitled to require as proof in accordance with paragraph (f)(i) of this subclause, a certificate of a medical practitioner. Provided that where he/she is genuinely unable to give notification prior to the commencement of the shift the requirements of paragraph (f)(i) of this subclause shall apply.

(f) Evidence Supporting Claim

(i) The employee shall provide proof that the employee was unable, on account of such illness or injury, to attend work on the day for which personal leave is claimed in the form of a sworn statutory declaration or a medical certificate provided by a qualified medical practitioner. In the case of absences of more than a single day an employer may request, prior to the employee's return to work, as proof a medical certificate.

(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.

(g) Personal Leave and Workers' Compensation

The employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation;

(h) 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 (e) and (f) are met.

(i) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f), 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. Casual employees are 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.

24. REFERENCE OF DISPUTES

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

- (a) negotiation between the employer and the union shop steward;
- (b) where there is no shop steward available or where the dispute is not settled within the provisions of subclause (a) of this clause, by negotiation between the union and employer representatives;

- (c) failing agreement being reached within the provisions of subclause (b) of this clause, the union or the employer may refer the matter to the Tasmanian Industrial Commission for decision.
- (d) at any stage of this procedure either party may call a seven day cooling-off period during which work shall continue uninhibited from industrial action during this period.

25. REST PERIOD

Employees shall be allowed a rest period of 10 minutes without loss of pay after each three hours of consecutive work provided that where the employer and employee/s agree a rest period once fallen due may be deferred and taken at a later time on that day or be taken at such times on any day that best suits the business' needs.

26. RIGHT OF ENTRY

Right of entry shall be in accordance with Section 77 of the *Industrial Relations Act 1984*.

27. SHOP STEWARD

An employee appointed steward or delegate in the shop, office, or department in which the person is employed shall, upon notification thereof to the employer, be recognised as the accredited representative of the union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees whom the person represents, provided that if the steward so requests it, the person may be accompanied at such interview by the person's union official.

28. SUNDAY AND HOLIDAY WORK (EXCLUDING PART-TIME AND CASUAL EMPLOYEES)

- (a) Payment shall be at the rate of double time for work performed on a Sunday.
- (b) Payment shall be at the rate of double time and a half for work performed on a holiday as prescribed in Clause 16 - Holidays with Pay of this award.
- (c) Employees required to work on a Sunday or a holiday as prescribed in Clause 16 - Holidays with Pay of this award, shall receive a minimum of three hours pay at the appropriate rate.
- (d) This clause shall not apply to employees engaged as part-time and casual employees. Payment for these categories of employees shall be made in accordance with Clause 21 - Part-time and Casual Employees.

29. SUPERANNUATION

(a) Definitions

'Approved Fund' means a Superannuation Scheme which is established in accordance with the Operational Standards for Occupational Superannuation Schemes and has received preliminary listing from the office of the Occupational Superannuation Commissioner - Interim Group.

'ARF' means the Australian Retirement Fund established by a Trust Deed and Articles on 11 July 1986.

'Employer' means an employer in terms of Clause 2 - Scope of this award.

'Fund' Means ARF or an approved fund as defined.

'Union' means the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch.

(b) Fund

- (i) For the purposes of this award, contributions made by the employer in accordance with the provisions of subclause (d) - Employer Contributions shall be paid to the Treasurer of ARF.
- (ii) All employers bound by this award shall apply to and become a party to ARF and upon the acceptance of the Trustees of that Scheme of an application to become a participating employer to ARF, duly signed and executed by that employer, become a participating employer of ARF.
- (iii) An approved Superannuation Fund shall also mean such other Superannuation Scheme established and conforming with the Commonwealth's Operational Standards for Occupational Superannuation Funds as at 5 July 1988 subject to agreement from the union or as determined by the Tasmanian Industrial Commission.

(c) Eligibility for Membership

- (i) An employee having completed three months continuous service with the employer shall be eligible from the first entry date which next occurs to have contributions paid to the Fund subject to subclause (e) - Employee Contributions.
- (ii) An employee shall be enrolled in the approved Superannuation Fund upon the acceptance of the Administrator of the Fund of a membership application form and shall be deemed to be a member of the scheme from his or her entry date as prescribed in paragraph (c)(i) herein.

(iii) Subject to the provisions contained in paragraphs (c)(i) and (c)(ii) herein an employee who is a member of an approved Fund and was having contributions paid in accordance with this award at his or her previous place of employment shall continue to have contributions paid on his or her behalf from the date of commencing employment with their current employer.

(d) Employer Contributions

(i) Contributions shall be paid by the employer on the following basis:

Ordinary Hours Worked in a Week	Weekly Contributions
38 hours or more	9 per cent of the weekly wage as set out in Clause 8 – Wages of this award
10 hours or more but less than 38	9 per cent of the weekly wage earned by the employee
Less than 10 hours	9 per cent of the weekly wage earned by the employee

(ii) Weekly contributions shall be paid to the Fund on at least a calendar monthly basis.

(iii) An employer shall not be required to contribute during any period of unpaid leave. Furthermore an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.

(iv) A pro rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.

(e) Employee Contributions

Subject to the rules of the Fund, employees who may wish to make contributions to the Fund additional to those being paid pursuant to subclause (d) - Employer Contributions herein, shall be so entitled. Such employees may either forward their own contribution directly to the Fund Administrators or, where it is practicable to do so, authorise the employer to pay into the fund from the employee's wages, amounts specified by the employee subject to the amount of contribution being expressed in whole dollars and any adjustment to the level of contribution being subject to three months notice in writing from the employee to the employer or such lesser period as they may both otherwise agree.

(f) Cessation of Contributions

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

(g) Duration

This clause shall operate from the beginning of the first full pay period to commence on or after 15 March 1989 and shall remain in force for a period of two years.

(h) For the purpose of this clause, the following company is exempt from making superannuation contributions into ARF and shall use the fund nominated:

Company	Fund
CLEENCO	National Mutual Simple Super
The Cleaning Lady	Any employee as at 25 November 2002 who was having contributions made to Tasplan, HESTA, Hostplus-Hospitality Super, Australian Primary or Synergy Master Fund

30. TECHNOLOGICAL CHANGE

Notwithstanding the provisions of Clause 13 - Contract of Employment, where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes, the employer terminates the employment of an employee who has been employed by him/her for the preceding 12 months, he/she shall give the employee three months' notice of the termination of his/her employment: provided that, if he/she fails to give such notice in full:

- (a) he/she shall pay the employee at the rate specified for the employee's classification in Clause 8 - Wage Rates, of this award, for a period equal to the difference between three months and the period of the notice given; and
- (b) the period of notice required by this clause to be given shall be deemed to be service with the employer for the purposes of long service leave and annual leave, provided that the right of the employer to dismiss an employee for the reasons specified in subclause (e) of Clause 13 - Contract of Employment, shall not be prejudiced by the fact that the employee has been given notice pursuant to this clause of the termination of the employee's employment.

When an employer gives an employee notice of the termination of his/her employment on account of the introduction or proposed introduction of mechanisation or technological changes, within 14 days thereafter he/she shall give notification in writing to the Secretary for Labour and Secretary of the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, of that fact, stating the employee's name, address and usual occupation and the date when the employment terminated or will terminate in accordance with the notice given.

31. TRAVELLING TIME AND EXPENSES

- (a) Where an employee is sent to work from an employer's recognised place of business the employer shall pay all travelling time from such place of business to the job and if the employee is required to return the same day to the employer's place of business the employer shall pay travelling time to the place of business. An employee sent for duty to a place other than his regular place of duty or required by his/her employer to attend a court of inquiry in connection with his/her employment shall be paid travelling time.
- (b) Where an employee is required to cease or to commence duty at a time when the usual means of conveyance are not available he/she shall, at the employer's expense, be conveyed to a point nearest his home or place of duty to which he/she ordinarily would proceed during ordinary hours by public conveyance.

PROVIDED that where it was the practice previously to pay to employees employed at Llanherne Airport Terminal a travelling allowance, such employees shall receive an amount of \$2.85 for each day they are required to attend for duty.

- (c) An employee shall be reimbursed by the employer for all expenses incurred by the employee in using his/her private vehicle for the employer's purpose.
- (d) Where an employee is required to work a shift in two periods as prescribed in Clause 17 - Hours of Work (Full-time Employees Only) and Clause 21 - Part-time and Casual Employees of this award, the employee shall be paid an excess fares allowance of \$2.50 per day.

32. UNDERSTANDINGS

- (a) Classifications

The classification structure set out in Clause 8 - Wage Rates of this award will be subject to a trial and test period of six months from the date of operation of this award following which the parties may review the classification structure to overcome any problems or anomalies that have arisen during the trial period.

- (b) Employees are required to perform a broader range of tasks and accept increased responsibility for the work they perform in accordance with the classification structure set out in Clause 8 - Wage Rates.
- (c) The parties to this award are committed to the on-going process of modernising the terms of this award and to achieving more flexible arrangements for improved industry efficiency.

(d) Cleaning Materials

- (i) Employees may be made accountable for the monitoring of stock in terms of possible inappropriate use and replacement subject to an appropriate system being introduced by the employer.
- (ii) Employees shall be accountable for abuses including over-use of cleaning material and stealing.

(e) Future Agreements

The union agrees to enter into industrial agreements pursuant to Section 55 of the *Industrial Relations Act* to:

- (i) Establish a binding code of practice for employers who are members of the Association of Cleaning Contractors of Australia and the Tasmanian Chamber of Commerce and Industry Limited and for the regulation of probationary employment.
- (ii) Employment of junior administrative employees.

(f) Phase-in of New Classifications

Employers bound by this award shall have three months from the date of operation prescribed herein to assign employees into the classification structure as set out in Clause 8 - Wage Rates.

Tim Abey
COMMISSIONER

23 July 2008