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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

Tasmanian Trades and Labor Council
(T.3077 of 1991)

MONUMENTAL MASONS AWARD

COMMISSIONER R J WATLING

9 December 1992

Award variation - insertion of "Parental Leave" clause in lieu of "Maternity Leave" clause

ORDER -

**No. 2 of 1992
(Consolidated)**

AMEND THE **MONUMENTAL MASONS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERT IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

This award shall be known as the "Monumental Masons Award".

2. SCOPE

This award is established in respect of the trade of monumental mason and/or general stonemason.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation on and from 1 January 1993.

PROVIDED that it is a term of this award (arising from the decision of the Tasmanian Industrial Commission State Wage Case of 30 October 1989) that the union(s) undertake(s), for the duration of the principles determined by that decision, not to pursue any extra claims, award or overaward, except where consistent with those principles.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 1 of 1990 (Consolidated) and Nos. 1 and 2 of 1991 and No. 1 of 1992.

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Construction Forestry and Mining Employees Union, Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.
 - (ii) the Federation of Industrial, Manufacturing and Engineering Employees, Tasmania Branch and the Officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope; and
- (d) the following organisations of employers in respect of whom award interest has been determined:
 - (i) the Tasmanian Confederation of Industries.

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7. DEFINITIONS

- (a) **'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.

8. WAGE RATES

1. WAGE RATES

Adult employees of a classification hereinafter mentioned shall be paid the wage rates assigned to that classification.

	Amount Per Week \$
(a) Monumental Masons	355.60
(b) All other employees (irrespective of age)	294.20

2. FOREMAN AND LEADING HANDS

A person specifically appointed to be a foreman or a leading hand shall be paid at the rate of the undermentioned additional amounts above the rates of the highest classification supervised, or his own rate, whichever is the highest, in accordance with the number of persons in his charge:

	Amount Per Week \$
(a) in charge of not more than 1 person	8.70
(b) in charge of 2 and not more than 5 persons	19.10
(c) in charge of 6 and not more than 10 persons	24.00
(d) in charge of more than 10 persons	32.20

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3. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 - Wage Rates of this clause, no adult employee shall be paid less than the rate of \$241.10.
- (b) Provided that payments for overtime, holiday and weekend penalties, and disability allowances prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates payments during sick leave and annual leave, and for all other purposes of this award.

4. APPRENTICES

The minimum rates of wages that may be paid to apprentices shall be the undermentioned percentages of the rate prescribed for monumental masons in subclause 1 - Wage Rates of this clause adjusted to the nearest 10 cents.

	Percentage %	Amount Per Week \$
First year	38	135.10
Second year	55	195.60
Third year	75	266.70
Fourth year	90	320.00

5. HOURLY RATE

To an employee engaged by the hour on hourly rate (calculated to four decimal places of a dollar) equivalent to one fortieth of fifty-two over forty-six point eight of the rate which would be payable in pursuance of subclause 1 - Wage Rates, subclause 3 - Foreman and Leading Hands of this clause and Clause 9 - Allowances, subclause (c) - Disability Allowance of this award, had the employee been engaged by the week.

Provided nevertheless, that a casual employee shall be paid an additional 33 1/3 per cent loading on the hourly rate prescribed for the classification.

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9. ALLOWANCES

(a) Tool Allowance

In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates of this award and subclause (c) - Disability Allowance of this clause, employees shall be paid a tool allowance per week in accordance with the following:

Carver	11.50
Letter Cutter	11.50
Stonemason	11.50

When all tools are supplied by the employer this clause does not apply.

(b) Allowance for Distant Jobs

(i) For the purposes of this subclause, 'a distant job' is one in respect of which the distance or the travelling facilities available to and from makes it reasonably necessary that the employee shall live and sleep at some other place than his usual place of residence.

(ii) For an employee engaged on work on a distant job as defined in (i) above, the employer shall provide suitable board and accommodation, and if such is not provided by the employer he shall pay to the employee an allowance to enable him to provide himself with suitable board and accommodation at the following rates:

if employed on the job for less than a full working week \$25.00 per day;

if employed on the job for a full working week or longer, at the rate of \$174.70 per week (of 7 days).

(c) Disability Allowance

(i) In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates and subclause 4 - Apprentices of this award, all employees engaged on construction work on site shall be paid an allowance of \$13.90 per week to compensate for the following disabilities of the industry, namely being subjected to:

(a) climatic conditions when working in the open on all types of work or on mufti-storey buildings prior to it being enclosed;

(b) the physical disadvantage of having to climb stairs or ladders, particularly on mufti-storey buildings prior to an elevator being available;

(c) dust blowing in the wind on building sites;

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- (d) sloppy and muddy conditions associated with the initial stages of erection of a building;
 - (e) dirty conditions caused by the use of form oil or from green timber;
 - (f) drippings from newly poured concrete;
 - (g) the disability of working on all types of scaffold, other than a single plank or a bosun's chair; and
 - (h) the lack of usual amenities associated with factory work (e.g. meal rooms, change rooms, lockers, etc.)
- (ii) In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates and subclause 4 - Apprentices of this award, all employees engaged on maintenance work shall be paid an allowance of \$7.00 per week to compensate for disabilities of the industry not otherwise provided for in this award.
- (iii) "Construction work" means work in connection with the erection, repair, maintenance, renovation, ornamentation, or demolition of buildings or structures, and the making, preparing, assembling or fitting in connection therewith or the making, preparing, assembling, and the fixing of any material necessitating the use of tools or machines.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

(b) Annual Leave Exclusive of Public Holidays

- (i) Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 12 - Holidays with Pay of this award, 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.
- (ii) Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

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(c) 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 or accident or on account of leave granted by the employer; or
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee.

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, in writing if practicable, within 48 hours of the commencement of such absence of his inability to attend for duty and as far as, practicable state the nature of the illness, injury, or cause, and the estimated duration of his 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 purposes of this clause unless the employer, during the absence or within 14 days of the termination of the absence, notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

(d) Proportionate Leave on Termination of Service

If after 40 hours' continuous service excluding overtime in any qualifying 12 monthly period an employee leaves his employment or his employment is terminated by the employer, the employee shall be paid pro-rata for the leave for which he has qualified on the basis of:

four forty-eighths of a week's wage in respect of each 40 hours for which leave has not been granted.

(e) Payment in Lieu Prohibited

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

(f) Broken Leave

The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in 2 separate periods and not otherwise.

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(g) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 Wage Rates, subclause 2 - Foreman and Leading Hands, of this award.

(h) Calculation of Service

Where the employer is a successor or assignee or transmittee of business if an employee in the employment of the employer's predecessors at the time when he became such successor or assignee or transmittee the employee in respect of the period during which he was in the service of the predecessor, shall for the purpose of this clause, be deemed to be in the service of the employer.

(i) Disputes

Any dispute as to the rights of an employee to or with respect to annual leave shall be dealt with by the Secretary for Labour.

11. COMPASSIONATE LEAVE

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 3 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.

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12. HOLIDAYS WITH PAY

- (a) All employees shall be allowed the following days as paid holidays:

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for the holidays mentioned in subclause (a) above which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) above shall be at the rates prescribed elsewhere in this award.

13. HOURS

The ordinary hours of employment shall be 40 per week, to be worked in 5 days of 8 hours each (exclusive of meal periods) between the hours of 8.00am and 5.00pm, Monday to Friday inclusive.

14. INCLEMENT WEATHER

When an employer and an employee engaged on fixing work in a cemetery agree that such work cannot be carried out owing to wet weather, the employer shall provide the employee with other work. In the event of the employer failing to do so he shall pay the employee for the time so lost.

15. MEAL ALLOWANCE

- (a) An employee required to work overtime for more than 2 hours without being notified on the previous day or earlier that he will be required to work shall either be supplied with a meal by the employer or be paid the amount of \$4.70 provided that employees living in the same locality as their work place who can reasonably return home for meals shall not be entitled to the benefit of this clause.
- (b) If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the time advised, he shall be paid the amount prescribed in subclause (a) of this clause for a meal which he has provided but which is surplus.
- (c) An employee required to work during his meal hour shall be paid at the rate of time and a half until he is allowed the usual period of time for a meal break.

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Provided that an employer may be permitted to advance an employee's meal break so that it will conclude not later than 1.30 p.m. In these circumstances the penalty rate prescribed in this subclause shall not apply.

16. MIXED FUNCTIONS

Any employee who is engaged for half or more than half of one day on duties carrying a higher rate than his usual classification shall be paid the higher rate for the whole of such day. If employed on such work for less than half of one day he shall be paid at the higher rate for the time so worked.

17. OVERTIME

For all time of duty before the time fixed for commencing work or after the time fixed for ceasing work, or on a Saturday, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter.

18. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

- (i) any period of leave taken in accordance with this clause;

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

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

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

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).
- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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(iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

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

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

(g) Variation of Period of Maternity Leave

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

(1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(2) The period may be further lengthened by agreement between the employer and the employee.

(ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

(i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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

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(i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (1) the birth occurring earlier than the expected date; or
 - (2) the death of the mother or the child; or
 - (3) other compelling circumstances.

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(iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

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

(1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(2) the period may be further lengthened by agreement between the employer and the employee.

(ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

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

(i) Effect of Paternity Leave on Employment

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

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(j) Termination of Employment

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

(k) Return to Work after Paternity Leave

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

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

(l) Replacement Employees

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

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PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

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

(c) Eligibility

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

- (i) an unbroken period of up to three weeks at the time of the placement of the child;

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

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

(d) Certification

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

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

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- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
 - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
 - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

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- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(m) Replacement Employees

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

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

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

'Spouse' includes a de facto spouse.

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

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

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

(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

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(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.
- (ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (iv) The terms of this agreement shall apply to the part-time employment.

(i) Termination of Employment

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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

- (i) limiting the number of employees who may work part-time;
- (ii) establishing quotas as to the ratio of part-time to full-time employees;
- (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or

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(iv) requiring consultation with, consent of or monitoring by a union;
and such provisions do not apply to part-time work under this clause.

(m) Replacement Employees

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

19. PRESENTING FOR WORK AND NOT REQUIRED

- (a) Except when notice is given to an employee by his employer or his responsible representative not to present himself for work, or through inclement weather and if an employee attends for such work and his services are not required, such employee shall be paid a minimum of 4 hours at the appropriate rate in addition to fares payable under Clause 9 - Allowances, subclause (b) - Allowance for Distant Jobs and Clause 28 - Travelling Time of this award. The employee shall be informed within 30 minutes of the usual starting time that his services are not required.
- (b) An employee who is required to attend for work and is kept waiting to commence work by the instruction of the employer or his representative shall be paid at his ordinary rate of pay for the time he is kept so waiting.

20. REST PERIODS

- (a) An employee who has worked continuously, except for the intervention or cessation for meals or crib-time as allowed by this award, for 20 hours, shall not be required to continue at or recommence work for at least 12 hours.

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- (b) There shall be allowed, without deduction of pay, a rest period of 10 minutes (from the time of ceasing work therefor until the time of resuming work) between the hours of 9.30 a.m. and 11.00 a.m. and a further rest period of 10 minutes (from the time of ceasing work therefor until the time of resuming work) between the hours of 2.30 and 3.30 each afternoon.
- (c) An employee working overtime shall be allowed a crib-time of 20 minutes without deduction of pay after each 4 hours, of overtime worked if the employee continued to work after such crib-time.

Unless the period of overtime is less than 2 hours an employee before starting overtime after working ordinary hours shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates.

An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that in the event of any employee remaining at work after ceasing time without taking the crib-time of 20 minutes and continuing to work for a period of 2 hours, he shall be regarded as having worked two and a third hours since the said ceasing time and be paid accordingly.

An employee required to work overtime for 2 hours or more without being notified the previous day shall be paid a meal allowance of \$4.70.

- (d) Where shift-work comprises 3 continuous and consecutive shifts of 8 hours each per day, a crib-time not exceeding 20 minutes in duration shall be allowed without deduction of pay in each shift, such crib-time being in lieu of any other rest period or cessation of work provided for or prescribed elsewhere by this award.
- (e) Where an employee has worked for 2 hours in a place in the shade where the temperature has been raised by artificial means to more than 54.4 deg Celsius, he shall be allowed, without deduction from pay, a rest period of 20 minutes, and so also when he has worked any subsequent period of 2 hours in such a place.
- (f) When an employee has worked for 2 hours in a place where the temperature has been lowered by artificial means to less than 0 deg Celsius, he shall be allowed, without deduction of pay, a rest period of 20 minutes and so also when he has worked any subsequent period of 2 hours in such a place.
- (g) The provisions of subclauses (b), (c) and (d) of this clause shall not be applicable to the case of any employee who is allowed the rest periods prescribed by subclauses (e) and (f) of this clause.

21. RIGHT OF ENTRY

- (a) One official of each building union will have the right of entry on building projects during working hours provided he applies to the foreman for permission to enter (and this permission shall not be unreasonably withheld).

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- (b) The purpose of entry shall be confined to interviewing the appointed representative of the union, interviewing any member of the union employed thereon or any employee following the particular calling the union official is representing.
- (c) Meetings of employees will only be held at meal breaks and not during working hours.
- (d) If an employer alleges that an official is unduly interfering with the work of the job or is causing dissatisfaction among the employees thereon or is offensive in his manner, or is committing a breach of any of the conditions set out in this clause such employer may refuse to allow the official to enter into or to remain on the place, but the official shall have the right to bring such refusal to the attention of the Tasmanian Industrial Commission who will arbitrate on the dispute.

22. SAVING

Any employee who is at present in receipt of a wage rate in excess of that herein prescribed shall not have his wage rate reduced as a result of this award.

23. SERVICE INCREMENTS

- (a) In addition to any other payment to which an employee other than a casual may be entitled under this award, an adult employee shall be entitled as follows to an additional payment according to the years of service he has completed in the industry. The amount payable shall in each case be regarded as part of the employee's ordinary rate of pay for all purposes:

	Per Week \$
After completion of 1 year's service in the industry	2.30
After completion of 2 year's service in the industry	3.30
After completion of 3 year's service in the industry	4.40
After completion of 5 year's service in the industry	5.40
After completion of 10 year's service in the industry	10.90

- (b) The onus shall be upon the employee to satisfy the employer that he has completed the number of years service in the industry which he claims.
- (c) For the purpose of this clause, 'service in the industry' shall mean service in Tasmania provided that where an employee commencing in the industry in Tasmania has worked in the industry in another State, service in that State shall count for purpose of service in Tasmania, subject to the production of evidence satisfactory to the employer of such service.

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24. SICK LEAVE

- (a) An employee, engaged by the week, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, within 48 hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of 2 weeks of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) above an employer may within one month of this award coming into operation or within 2 weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

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25. SPECIAL RATES AND PROTECTIVE CLOTHING

(a) Swing Scaffold

A payment of \$2.29 for the first 4 hours or any portion thereof, and 47 cents for each hour thereafter on any day shall be made to any person employed:

- (i) on any type of swing scaffold or any scaffold suspended by rope or cable, bosun's chair etc.;
- (ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height of 6 metres or more above the nearest horizontal plane.

Provided that an apprentice with less than 2 years experience shall not use a swing scaffold or bosun's chair.

And further provided that solid plasterers when working off a swing scaffold shall receive an additional 10 cents per hour.

(b) Explosive Powered Tools

An operator of explosive powered tools, as defined in this award who is required to use an explosive powered tool, shall be paid 75 cents for each day on which he uses such a tool.

(c) Flexible Drive Polishing Machines

Operators of flexible drive polishing machines shall be supplied with aprons by the employer when requested, but no such employee shall be entitled to more than one apron in any one year.

(d) Heavy Blocks

The employer shall provide mechanical means for the handling, lifting and placing of heavy blocks, or pay in lieu thereof the following allowances to employees engaged on such work:

- where the blocks weigh over 5.5 kg
and under 9 kg - 32 cents per hour
- where the blocks weigh 9 kg
or over up to 18 kg - 55 cents per hour
- where the blocks weigh over 18 kg - 80 cents per hour

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An employee shall not be required to lift a building block in excess of 20 kg in weight unless such employee is provided with a mechanical aid or with an assisting employee; provided that an employee shall not be required to manually lift any building block in excess of 20 kg in weight to a height of more than 4 feet (1.2m) above the working platform.

26. SUNDAY AND HOLIDAY WORK

- (a) For all time of duty on Sundays, payment shall be made at the rate of double time.
- (b) For all time of duty on any of the holidays mentioned in Clause 12 - Holidays with Pay, of this award, payment shall be made at the rate of double time and one half.

27. TERMINATION OF SERVICE

Employment shall be from day to day for the first fortnight and thereafter shall be terminable by one week's notice on either side or by the payment or forfeiture of one week's wages as the case may be but this shall not affect the right of the employer to dismiss an employee without notice for inefficiency, misconduct, or neglect of duty, in which case wages shall be paid up to the time of dismissal.

28. TRAVELLING TIME

- (a) All time spent in travelling to distant jobs from the employer's workshop shall be paid for at the rate of ordinary time.
- (b) Employees travelling to or from distant jobs shall be reimbursed all fares and expenses necessarily incurred.

R.J. Watling
COMMISSIONER

9 December 1993