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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application for award or variation of award

Tasmanian Trades and Labor Council

(T6941 of 1997)

All public and private sector awards

**Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union**

(T6928 of 1997)

Automotive Industries Award

(T6929 of 1997)

Draughting & Technical Officers (Private Industry) Award

(T6930 of 1997)

Fish, Aquaculture and Marine Products Award

(T6931 of 1997)

Metal & Engineering Industry Award

(T6932 of 1997)

Optical Industries Award

(T6933 of 1997)

Shipbuilders Award

(T6934 of 1997)

Surveyors (Private Industry) Award

The Australian Workers' Union, Tasmania Branch

(T6947 of 1997)

Automotive Industries Award

Bootmakers Award

Building Trades Award

Building and Construction Industry Award

Butter and Cheesemakers Award

Carriers Award

Clay and Mud Products Award

Concrete Products Award

Dairy Processing Award

Farming and Fruitgrowing Award

Fish, Aquaculture and Marine Products Award

Horticulturists Award

Marine Boards Award

Meat Processing Industry Award

Metal and Engineering Industry Award

Monumental Masons Award

Optical Industries Award

Pasminco Rosebery (Mining) Award

Plant Nurseries Award

Produce Award

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Public Vehicles Award
Quarrymens Award
Roadmakers Award
Rubber Trades Award
Shearing Industry Award
Shellfish Industry Award
Timber Merchants Award
Wireworking Award
National Training Wage (Tasmanian Private Sector) Award

Transport Workers' Union of Australia, Tasmanian Branch

(T6956 of 1997)

Transport Workers General Award

National Union of Workers, Tasmanian Branch

(T6971 of 1997)

Automotive Industries Award
Fuel Merchants Award
Produce Award
Retail Trades Award
Rubber Trades Award
Softgoods Award
Wholesale Trades Award
Fibreglass and Plastics Award
Timber Merchants Award
Wholesale Pharmaceutical Award

**Australasian Meat Industry Employees Union,
Tasmanian Branch**

(T6979 of 1997)

Meat Processing Industry Award
Meat Retailing Award

**Textile, Clothing and Footwear Union of Australia,
Tasmanian Branch**

(T6987 of 1997)

Bootmakers Award
Clothing Industry Award
Textile Award

Australian Municipal, Administrative, Clerical and Services Union

(T6991 of 1997)

Aerated Waters Award
Barristers and Solicitors Award
Broadcasting and Television Award
Clerical and Administrative Employees (Private Sector) Award
Community Services Award
Entertainment Award
Estate Agents Award

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Furnishing Trades Award
Independent Schools (Non-Teaching Staff) Award
Insurance Award
Photographic Industry Award
Printers Award
Public Accountants Award
Restaurant Keepers Award
Shipping Award
Totalizator Agency Award

Health Services Union of Australia, Tasmania No. 1 Branch

(T6993 of 1997)
Dentists Award
Disability Service Providers Award
Medical Practitioners (Private Sector) Award
Medical Diagnostic Services Award
Nursing Homes Award
Hospitals Award

RUBBER TRADES AWARD

FULL BENCH:

PRESIDENT F D WESTWOOD
DEPUTY PRESIDENT B R JOHNSON
COMMISSIONER R J WATLING

Wage Rates - State Wage Case July 1997 - application to flow on Australian Industrial Relations Commission Safety Net Review decision April 1997 (Print P1997) agreed tripartite position - Wage Fixing Principles varied - \$10.00 per week arbitrated safety net adjustment approved- all private sector awards to be varied on application no earlier than ffpp on or after 14 July 1997 - State Minimum Wage to be subject to separate application

ORDER -

**No. 2 of 1997
(Consolidated)**

A NEW CLAUSE IS SUBSTITUTED FOR CLAUSE 8 AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Rubber Trades Award".

2. SCOPE

This award is established in respect of:-

- (a) retail sale, storing and distribution of rubber tyres and may include incidental products and services; and/or
- (b) vulcanising, retreading, repairing and fitting of rubber tyres; and/or
- (c) manufacture of rubber tyres and other rubber goods.

3. ARRANGEMENT

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
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Hours	17
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Structural Efficiency	31
Trainee Clerk (As Defined)	32

4. DATE OF OPERATION

This award shall come into operation from the first full pay period commencing on or after 14 July 1997.

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 the Rubber Trades Award No. 2 of 1996 (Consolidated), No. 3 of 1996, No. 4 of 1996 and No. 1 of 1997.

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;

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- (c) the following organisations of employees in respect of whom award interest had been determined:-
- (i) the Australian Municipal, Administrative, Clerical and Services Union and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) The Australian Workers' Union, Tasmania Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (iii) the National Union of Workers, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (iv) the Shop, Distributive and Allied Employees Association, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (v) the Transport Workers' Union of Australia, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisations of employers in respect of whom award interest had been determined:-

the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

- (a) Classification Standards

Tyre Retail Employee Level 1 - (Proposed wage relativity to Tyre Retail Employee Level 5 after completion of minimum rates adjustment process = 78%)

Point of Entry

- New employee

Description

- An employee at this level would work under direct supervision and perform routine tasks.
- May work individually or as part of a team.

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Tasks

Indicative tasks at this level may include:

- general cleaning and labouring
- housekeeping
- assisting other employees

Tyre Retail Employee Level 2 - (Proposed wage relativity to Tyre Retail Employee Level 5 after completion of minimum rates adjustment process = 82%)

Point of Entry

- Level 1
- Relevant experience and/or training

Description

- An employee at this level works above and beyond an employee at level 1 under direct supervision.
- Understands and undertakes basic quality procedures.
- May work individually or in a team environment.

Tasks

Indicative tasks at this level may include:

- perform duties using basic written spoken and/or diagrammatic instructions
- able to measure accurately
- able to fit pneumatic and solid tyres
- operate hand operated transport and lifting devices
- performs deliveries and sales work

Tyre Retail Worker Level 3 - (Proposed wage relativity to Tyre Retail Employee Level 5 after completion of the minimum rates adjustment process = 87.4%)

Point of Entry

- Level 2
- Relevant experience and/or training

Description

- An employee at this level works above and beyond an employee at level 2 under routine supervision.
- Exercises discretion to their level of skill and training.

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Tasks

Indicative tasks at this level may include:

- receiving, despatching, distributing, sorting, checking, and packing of goods and mail
- basic keyboard skills, able to type at 25 words per minute with 98% accuracy
- operate mixing and milling machines
- setting and drawing kilns
- sorting and file documents/records accurately
- preparation and receipt of documentation
- routine deliveries
- assist in tyre retreading
- operate business equipment such as a visual display unit for retrieval of information, photocopier and facsimile machine
- basic counter sales, including the sale of automotive parts that are incidental to the principle business of the establishment, such as wheels, batteries and exhaust systems
- soliciting orders for rubber tyres outside the employers place of business
- wheel alignment (non-trade).

Tyre Retail Employee Level 4 - (Proposed wage relativity to Tyre Retail Employee Level 5 after completion of minimum rates adjustment process = 92.4%)

Point of Entry

- Level 3
- Relevant experience and/or training

Description

- An employee at this level works above and beyond an employee at level 3 and requires minimal supervision.
- Able to work from complex instructions and exercises discretion in the performance of their tasks.
- May assist in the provision of on-the-job training.
 - Assists in the co-ordination of work within the enterprise.
- Is responsible for the quality of their own work.

Tasks

Indicative tasks at this level may include:

- using precision measuring instruments
- licensed operation of material handling equipment
- basic (non-trade) maintenance
- calendar operation

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- utilise basic word processing skills to produce documents such as letters and memorandums
- prepare and record petty cash and bank transactions
- customer service
- processing of sales orders
- periodic stock checks and stock reconciliation
- tyre retreading

Tyre Retail Worker Level 5 - (Proposed relativity at the completion of the minimum rates adjustment process = 100%)

Point of Entry

- Trade Certificate
- Certificate of Commercial Studies (TAFE) or equivalent and who are required to use skills and perform tasks within the range of level 5.

Description

- An employee at this level exercises the skills obtained through the satisfactory completion of a trade certificate or tradesperson's rights certificate.

Tasks

Indicative tasks at this level may include:

- wheel alignment (tradesperson)
- limited range of automotive mechanical tasks
- operate equipment incidental to their work
- maintain payroll file following standard procedures and using existing models/fields of information or a central computer resource
- sort, process and record transactions, payroll, petty cash
- use software packages to create correspondence and business documents beyond that of basic word processing

Tyre Retail Worker Level 6 - (Proposed wage relativity to Tyre Retail Employee Level 5 after completion of minimum rates adjustment process = 105%)

Point of Entry

- Tyre Retail Worker 5
- Relevant experience and training

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Description

- Exercises discretion within the scope of this level
- Works individually or in a team environment
- Understands and implements quality control techniques
- Provides trade guidance and assistance

Tasks

Indicative tasks at this level may include:

- understands and applies automotive parts interpretation
- inspects products for conformity with operational standards
- checking of vehicles to ensure tasks are completed to customers and manufacturers specifications

(b) General

'Afternoon shift' means any shift finishing after 6.00 pm. and at or before midnight.

'Casual Employees' means employees who are employed on a casual basis and includes persons who are employed for periods not exceeding 5 days at any one time.

'Night shift' means any shift finishing subsequent to midnight, and at or before 8.00 am.

'Part-Time Employee' shall mean an employee who is engaged on a weekly basis for not less than 20 hours or more than 38 hours per week but shall not include a casual employee (as defined).

'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.

'Tradesman' shall mean an employee who has successfully completed an apprenticeship in fitting/turning or mechanical fitter as proclaimed in the Industrial and Commercial Training Act 1985, or gained Tradesman's Rights under the Tradesmen's Rights Regulations Act 1964.

'Trainee Clerk' means a person employed by the employer under the terms of the Australian Traineeship System and any agreements attached thereto.

'Training Agreement' shall mean an agreement registered under the provisions of the Industrial and Commercial Training Act 1985.

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8. WAGE RATES

1. WAGE RATES

Adult employees in a classification hereunder mentioned shall be paid the base rate and supplementary payment appearing opposite that classification.

Classification	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Tyre Retail Employee Level 1 (as defined)	78	325.40	34.00	359.40
Tyre Retail Employee Level 2 (as defined)	82	342.10	34.00	376.10
Tyre Retail Employee Level 3 (as defined)	87.4	364.60	34.00	398.60
Tyre Retail Employee Level 4 (as defined)	92.4	385.50	34.00	419.50
Tyre Retail Employee Level 5 (as defined)	100	417.20	34.00	451.20
Tyre Retail Employee Level 6 (as defined)	105	438.10	34.00	472.10

2. JUNIOR EMPLOYEES

The minimum weekly wage rate to be paid by employers to junior employees shall be the undermentioned percentages of the weekly wage rate for Retail Tyre Employee Level 2 (as defined). The adjustment to be calculated to the nearest 10 cents.

	%	Weekly Wage Rate (\$376.10)
Under 16 years of age	58	218.10
16 to 17 years of age	65	244.50
17 to 18 years of age	75	282.10
18 to 19 years of age	85	319.70
19 to 20 years of age	100	376.10

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3. TRAINEE CLERK (AS DEFINED)

The minimum weekly wage rate payable to a trainee clerk (as defined) shall be determined by the following method of calculation:

By taking the appropriate weekly wage rate for a junior clerk as prescribed in subclause 2 - Junior Employees of this division then multiplying it by 39 and dividing it by 52 (39 being the actual number of weeks spent on the job).

PROVIDED that the wage determined by this calculation shall in no case be less than the minimum rate (as varied from time to time) prescribed by the Australian Traineeships System Guidelines.

PROVIDED ALWAYS that the Trainee Clerk (as defined) wage rate shall be calculated in multiples of ten cents with any result of five cents or more being taken to the next ten cents.

4. CLASSIFICATION STRUCTURE - TRANSLATION SCHEDULE

(a) For the purpose of identifying an employees new classification in accordance with the creation of a new broadly based and generic classification structure the following schedule shall apply:

<u>Pre-existing Classification</u>	<u>New Classification</u>
Tyre Serviceman - Grade 1	Tyre Retail Employee Level 2
Tyre Serviceman - Grade 2	Tyre Retail employee Level 2
Factory Hand	Tyre Retail Employee Level 2
Indoor Salesman	Tyre Retail Employee Level 3
Delivery Salesman	Tyre Retail Employee Level 2
Commercial Traveller	Tyre Retail Employee Level 3
Wheel Aligner (non tradesman)	Tyre Retail Employee Level 3
Wheel Aligner (tradesman (as defined))	Tyre Retail Employee Level 5
Clerk 1st year adult experience)	Translation shall be based on skills as opposed to years of service
Clerk 2nd year adult experience)	
Clerk 3rd year adult experience)	
A clerk who is in charge of and responsible for the work of 2 employees	Tyre Retail Employee Level 5
A clerk who is in charge of and responsible for the work of 3 or 4 employees	Tyre Retail Employee Level 5
A clerk who is in charge of and responsible for the work of 5 or more employees	Tyre Retail Employee Level 6

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PROVIDED that employees who, prior to the first full pay period commencing on or after 12 April, 1994, are in receipt of wage rates in excess of those herein prescribed shall not have their wage rates reduced as a result of the making of this new award and the translation process.

- (b) The parties to the award shall co-operate in the translation from the old structure to the new structure. In the event of any disagreement the matter shall be referred to the Tasmanian Industrial Commission for determination.

5. SUPPORTED WAGE SYSTEM

- (a) Eligibility criteria

Subject to this section an employer may engage employees at a supported wage rate (as set out in subclause (c) of this section) 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 section 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 section 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 s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

- (b) For the purposes of this section:

- (i) **"Supported Wage System"** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **"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.
- (iii) **"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.

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(iv) **"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.

(c) Supported wage rates

Employees to whom this section 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 (subclause (d))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$45 per week.)

(d) Assessment of capacity

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

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

(e) Lodgment of assessment instrument

- (i) All assessment instruments under the conditions of this section, 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.

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- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of assessment

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

(g) Other terms and conditions of employment

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

(h) Workplace adjustment

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

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this section for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with subclauses (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.

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- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

9. ALLOWANCES

- (a) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$9.20 per week.

PROVIDED that such an allowance shall not be subject to an adjustment when computing payments for shift penalty rates, for weekend work or work on holidays with pay, for overtime or for any other purpose.

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) in any one or more of the occupations to which this award applies.

- (b) Annual Leave Exclusive of Holidays with Pay

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 15 - 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 that period one day for each such holiday falling as aforesaid.

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.

- (c) Calculation of Continuous Service

For the purposes of this clause service shall be deemed to be continuous notwithstanding:-

- (i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

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- (ii) any absence from work on account of personal sickness or accident and in calculating the period of 12 months' continuous service absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service; or
- (iii) any absence with reasonable cause, proof whereof shall be upon the employer, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months' continuous service.

(d) Proportionate Leave on Termination of Service

If after 1 month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage as follows:

3.08 hours for each completed week of continuous service.

(e) Leave to be Given and Taken

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) Time of Taking Leave

The annual leave provided by this clause shall be given and taken at times mutually agreed between the employee and the employer within 6 months of falling due.

(g) Calculation of Service

Where the employer is a successor or assignee or transmittee of a business if the employee was in the employment of the employer's predecessor 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.

(h) Payment for Period of Leave

- (i) Each employee before going on leave shall be paid the amount of wages he would have received in respect of the working time which he would have worked had he not been on leave during the relevant period or periods plus a loading equal to 17 1/2% of the amount paid in respect of annual leave.

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(ii) Shift Workers

Where an employee on shift work would have received shift penalties and shift allowances had he not been on leave during the relevant period and those penalties and allowances would have entitled him to a loading in excess of the 17 1/2% calculation then the rostered earnings calculation shall apply in lieu of the 17 1/2% loading.

(iii) The provisions of this subclause shall apply to proportionate leave on termination of service.

11. CHANGE ROOM AND ABLUTION FACILITIES

The employer shall provide a change room in which there shall be installed clothing lockers (one locker for each employee). The employer will provide in such change room or in a place convenient thereto wash-basins and/or showers and a sufficient supply of hot water.

12. COMPASSIONATE LEAVE

- (a) An employee shall be entitled to a maximum of 3 days without deduction of pay on each occasion of the death within the State of the employee's spouse, de facto spouse, father, mother, brother, sister, child, stepchild, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother or grandchild.
- (b) On each occasion the employee travels outside the State in connection with the death of one of the relatives specified, he/she shall be entitled to an additional 2 days without deduction of pay.

13. CONTRACT OF EMPLOYMENT

- (a) Except as hereinafter provided, employment shall be by the week. Any employee not specifically engaged as a casual employee (as defined) shall be deemed to be employed by the week.

Any employee employed by the week shall, provided he/she is ready, willing and available for work, be paid the weekly wage prescribed for a full week's work and in addition thereto such overtime or other penalty rates, if any, that may have occurred during the relevant period.

- (b) With the exception of casual employees (as defined) employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for neglect of duty or misconduct, and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully

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employed through any breakdown in machinery or any stoppage of work, by any cause for which the employer cannot be reasonably held responsible.

PROVIDED that during the first month of employment termination may be effected by either party on the giving of one day's notice or the payment or forfeiture of a day's pay as the case may be.

- (c) Part-time employees (as defined) shall be entitled to the holidays with pay, sick leave and annual leave as prescribed in Clause 16 - Holidays With Pay, Clause 10 - Annual Leave and Clause 34 - Sick Leave.

PROVIDED that such payment therefore shall be made at the rate normally paid to such employees for a similar period of time worked.

- (d) Casual employees (as defined) shall be paid 15% more than the appropriate rate specified herein for the particular class of work performed.
- (e) For the purpose of determining the hourly rate payable to part-time and casual employees (as defined) the appropriate weekly rate shall be divided by thirty eight.
- (f)(i) An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (ii) This provision does not deny such employees any award entitlement which might be applicable for performing work of a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the employees' substantive classification for performing work of a lower classification.

14. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:-
- (i) The majority of employees affected by the change must genuinely agree to the change.
- (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
- (iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.

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- (iv) The relevant union or unions must be a party to the agreement.
- (v) The relevant union or unions shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:-
 - (i) The term of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

15. HOLIDAYS WITH PAY

- (a) All employees (other than casual employees (as defined)) shall be allowed the following days as holidays with pay:-

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) of this clause 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 holidays, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed elsewhere in this award.
- (d) Where any holiday referred to in subclause (a) of this clause falls on a Saturday or Sunday, then the next ordinary working day shall be observed as a paid holiday.

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16. HOT WORK

Where the temperature in a rubber works or factory is unavoidably high, the ventilation shall be adequate to maintain a reasonable limit, ie., a temperature of not more than 43.3 degrees Celsius by a dry bulb thermometer. Where the temperature is greater than 43.3 degrees Celsius, the working time of employees in such places shall not exceed 6 hours per day with payment as for 8 hours work.

PROVIDED that the foregoing provisions shall not apply if the temperature of 43.3 degrees Celsius or less, using a dry bulb thermometer, is maintained for at least a three-fourth proportion of the working shift in the place of actual work wherein the employee is occupied.

The employer shall supply a thermometer which shall be readily accessible and available to employees to test the temperature at their working places at all reasonable times.

17. HOURS

- (a) The ordinary hours of work for full-time employees shall be an average of 38 per week worked on one of the following basis:-
- (i) 38 hours within a work cycle not exceeding seven (7) consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen (14) consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one (21) consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days; or
 - (v) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days in establishments where the method of banking of rostered days off has been agreed to.
- (b) Subject to subclause (a) of this clause the ordinary hours of work may be worked between the hours of 6.30 am and 6.00 pm Monday to Friday inclusive.

PROVIDED that where the hours of existing employees are affected by this change in the commencement time notice of not less than four weeks' shall be given to the employees and the appropriate union.

- (c) The ordinary hours of work prescribed herein shall not exceed eight hours (exclusive of meal breaks) on any day.

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- (d) An employee shall not be required to work on any day (including Saturdays, Sundays and Holidays with Pay) for more than 5 hours without a meal break of not less than 30 minutes or more than 60 minutes duration. Such meal break shall be taken between the hours of 11.00 am and 3.00 pm.

PROVIDED that where the employer and the majority of employees agree 6 hours may be worked before a meal break is taken.

Meal breaks may be staggered or changed to meet operations requirements.

- (e) Saturday and Sunday Work

- (i) An employer, the employee and the appropriate union(s) may agree that ordinary working hours be performed on a specific Saturday or any number of Saturdays for any individual employee upon the following conditions specified in this subclause.

- (1) The employee is paid at the rate of time and one half for all ordinary working hours on a Saturday.
- (2) The employee's weekend shall become the Sunday and Monday immediately following any Saturday worked as ordinary hours and any work performed on the said following Monday shall be paid at overtime rates as prescribed in Clause 21 - Overtime of this award.
- (3) The agreement of the appropriate union(s) shall not unreasonably be withheld.

- (ii) Notwithstanding subclause (a) hereof:

- (1) An employer and employee and their union where applicable may agree that ordinary working hours be performed on Saturdays and/or Sundays.
- (2) An employee who works ordinary hours on a Saturday in accordance with this subclause shall for all ordinary time worked on that day be paid at the rate of time and one half.
- (3) An employee who works on a Sunday in accordance with this subclause shall for all ordinary time worked on that day be paid at the rate of double time.

- (iii) In the event of a dispute about the operation of this clause the dispute shall be referred to the Tasmanian Industrial Commission.

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18. MEAL ALLOWANCE

Any employee who has worked six hours or more during ordinary time and who is required to work overtime for more than 2 hours immediately following his/her ordinary working hours, without being notified on his/her previous shift, or earlier, that he/she will be so required to work, shall be supplied with a meal by the employer or paid \$9.45 in lieu of same.

If an employee pursuant to such notice, has provided a meal and is not required to work overtime, he shall be paid \$9.45 for each meal so provided.

19. MIXED FUNCTIONS

An employee engaged for more than three hours of his/her time on one day or shift on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for such day or shift. If for less than three hours of his/her time on one day or shift he/she shall be paid the higher rate for the time so worked.

20. OCCUPATIONAL SUPERANNUATION

(a) Definitions

'The Fund' shall mean TASPLAN or an alternative fund as referred to in subclause (c) hereof provided that such alternative fund is approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'Eligible Employee' shall mean all employee other than -

- (i) an employee who earns less than \$450 per month;
- (ii) an employee under 18 years of age working for not more than 30 hours per week;
- (iii) an employee over 65 years of age.

'Ordinary time earnings' shall mean the classification rate including loadings for shift work, part-time or casual work and any permanent all purpose allowances but shall exclude overtime payments, leave loading and annual and/or long service leave payments on termination of employment and allowances in the nature of reimbursement (such as meal money).

(b) Contributions

- (i) An employer shall make a contribution equivalent to 3% of ordinary time earnings (as defined) into the fund in respect of all eligible employees (as defined).

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Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

- (ii) In the case of eligible casual and part-time employees, contributions shall become payable following the completion of 38 hours work each calendar month.
- (c) Alternative Funds
- (i) An employer shall not be required to pay a contribution on behalf of any eligible employee into more than one fund for the same period of employment.
 - (ii) Where an employer is already, at the time this clause is included in the award, paying on behalf of the employee a contribution for occupational superannuation of not less than 3% of ordinary time earnings into an Alternative Fund (as referred to in subclause (a) hereof) then the employer may continue to use that fund provided that contributions are made in accordance with this clause.
 - (iii) Where an Alternative Fund (as referred to in subclause (a) hereof) is in use for the majority of employees in a particular establishment then such alternative fund may be used for the purposes of this clause provided that contributions are made as herein prescribed.
 - (iv) Where agreement is reached between an employer and a union an alternative fund (as referred to in subclause (a) hereof) may be used for the purposes of contributions payable under this clause.

(d) Date of Operation

The provisions of this clause shall operate from, and contributions shall be payable from, the first pay period to commence on or after 1 September 1989.

21. OVERTIME

- (a) For all work performed in excess of 38 hours per week, or before the usual time of starting or after the usual time of 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, such double time to continue until the employee has been relieved from duty for at least 10 hours.

PROVIDED that an employee who works ten minutes or more past the time fixed for ceasing work shall be paid the appropriate overtime rate for all time worked after the time fixed for ceasing work.

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PROVIDED ALWAYS that this proviso shall not be used to obtain unpaid work from employees on a regular basis.

- (b) If an employee is required to work overtime sufficiently long to preclude him/her from having 10 hours rest before his/her next ordinary starting time the employee shall be entitled to be absent until he/she has had 10 consecutive hours off duty without deduction of pay for ordinary time off duty occurring during such absence.
- (c) For work done by employees during their ordinary meal break, and thereafter until a meal break is allowed, payment shall be made at the rate of time and one half.

PROVIDED that an employee shall not work more than 5 hours without a meal break.

- (d) In computing overtime each day's work shall stand alone.
- (e) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by thirty eight.
- (f) Call Back
 - (i) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours work at the appropriate rate for each time he/she is so recalled.

PROVIDED that except in cases of unforeseen circumstances arising the employee shall not be required to work the full three hours if the job he/she was recalled to perform is completed within a shorter period.

Where a second or subsequent recall occurs within the period covered by the minimum payment for the first or earlier recall, payment shall only be made for time outside such period.

- (ii) The provisions of paragraph (e) (i) above shall not apply in cases where it is customary for an employee to return to the employer's premises for periods not exceeding thirty minutes each to perform a specific job outside his/her ordinary working hours in which case the employee shall be paid for a minimum of one hours work at the appropriate rate for each time he/she is so recalled; or where the overtime is continuous (subject to a reasonable meal break) with the commencement of ordinary working time.
- (iii) Where the actual time worked is less than three hours on such recall or on each of such recalls, overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (b) of this clause.

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- (iv) This subclause shall not apply to a Tyre Retail Employee Level 2 (as defined) who is required by the employer to fit pneumatic and/or solid tyres away from the employer's depot after normal business hours.
- (g) A Tyre Retail Employee Level 2 (as defined) recalled outside his/her normal working hours to fit pneumatic and/or solid tyres shall be paid at the rate of double time for the period of time he/she is so recalled.

The calculation of the period of time of duty shall include only the time reasonably occupied in travelling to work between the time of the employee's departure from his normal place of residence and the time of his return thereto.

PROVIDED that:-

- (i) in the case of the first call back in any one day an employee shall be paid as for at least a period of two hours at the rate of double time; and
- (ii) in the case of each subsequent call back in the same day as for at least a period of one hour at the rate of double time.

PROVIDED that within a period covered by the minimum payment in paragraph (i) above, payment shall only be made for time outside such period;

- (iii) the conditions as specified in subclause (e) (iii) of this clause shall apply in respect of this subclause.

(h) Sunday Work

For all work performed on Sundays, payment shall be made at the rate of double time.

(i) Work on Holidays with Pay

For all work performed on any of the holidays mentioned in Clause 16 - Holidays With Pay of this award payment shall be made at the rate of double time and one half.

- (j) Where requested by an employee and agreed to by an employer, time off in lieu of payment for overtime may be taken. Time off shall be calculated by multiplying the hours worked by the appropriate overtime rate. Alternatively time off equivalent to the period of overtime worked may be taken in which case the employee shall be paid the appropriate penalties for such overtime work less the single time component for time taken in lieu of payment.

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22. 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 (as defined) but does not include an employee engaged upon casual or seasonal work.

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

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

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

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

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

(c) Eligibility for Maternity Leave

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

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

(d) Certificate

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

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

(e) Notice Requirements

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

(f) Transfer to a safe job

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

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

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(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

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

(i) Special Maternity Leave and Sick Leave

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

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

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

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- (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 (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

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

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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:

- (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.

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

(d) Certification

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

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

(e) Notice Requirements

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

(f) Variation of Period of Paternity Leave

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

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- (1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and the employee.
 - (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
 - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
 - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

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(k) Return to Work after Paternity Leave.

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

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

(l) Replacement Employees

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

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

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

(c) Eligibility

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

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

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

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(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.
- (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.

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- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave.
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave

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

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(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

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

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

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

'Spouse' includes a de facto spouse.

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

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

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

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(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

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

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

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

(e) Pro Rata Entitlements

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

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(f) Transitional Arrangements - Annual Leave

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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

(i) Termination of Employment

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

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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

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(m) Replacement Employees

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

23. PAYMENT OF WAGES

- (a) Wages shall be paid weekly, and shall be paid in full during working hours not later than 2 working days following the termination of the working week.

PROVIDED that in any week in which a holiday with pay prescribed by this award falls on either of those 2 days, that day shall not be taken into consideration as one of the 2 days.

Where agreement is reached between an employer and a majority of employees, wages may be paid fortnightly on the basis of one week's wages in arrears and one week's wages in advance.

- (b) At the discretion of the employer wages may continue to be paid by the current method or by direct transfer to an employee's bank (or other recognised financial institution) account.

Where an employer elects to pay employees by direct transfer the employer shall pay to employees, in addition to any other entitlements, an amount to cover government fees and charges for one deposit and one withdrawal per pay.

- (c) An employee kept waiting for wages on pay day after the usual time for ceasing work shall be paid at overtime rates, with a minimum payment of a quarter of an hour.
- (d) An employee whose services are dispensed with shall be paid the wages due to him/her on the day of dismissal, or they shall be forwarded to the employee by post on the day following.

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- (e) Payment of wages shall be made on the day before a holiday with pay as prescribed in Clause 15 - Holidays with Pay if a holiday falls on pay day.

24. PIECE-WORK

No employee shall be allowed to work on piece or contract rates.

25. PROTECTIVE CLOTHING AND/OR EQUIPMENT

- (a) Employees engaged in buffing shall be supplied by the employer with respirator and goggles.
- (b) In occupations which involve excessive wear on employees' clothing the employer, at his/her expense, shall provide suitable reinforcement to protect the employees' clothing from undue wear.
- (c) The employer shall supply wet weather gear where necessary.
- (d) The employer shall on request supply safety footwear and/or overalls, cost of which shall be subsidised to the extent of fifty per cent.

26. REST PERIOD

An employee employed for four hours or more on any one day shall have a rest period of 15 minutes' duration either in the morning or the afternoon in the employer's time.

27. RIGHT OF ENTRY OF UNION OFFICIALS

Right of entry for a duly accredited representative of a registered organisation prescribed in Clause 6 - Parties and Persons Bound shall be in accordance with the provisions of section 77 of the Industrial Relations Act 1984 and section 26 of the Industrial Relations Regulations 1993.

28. SETTLEMENT OF DISPUTES

Subject to the provisions of the Industrial Relations Act 1984 any grievance or claim arising out of the work place shall be dealt with in accordance with the following procedure:-

- (a) the matter shall be first discussed between the employee and the immediate supervisor.
- (b) if not resolved the matter shall be discussed between the employee, the employees' delegate and the employer.

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- (c) if the matter is still not settled it shall be referred to the State Secretary of the appropriate union and discussions may take place between the union and the company and if the company chooses, its representative.
- (d) Whilst the above procedure takes place the status quo that applied prior to the dispute arising shall remain and no industrial action shall be taken.
- (e) if the matter is still not settled it will be referred to the Tasmanian Industrial Commission.

29. SHIFT WORKERS

- (a) A shiftworker shall, in addition to his/her ordinary weekly wage rate, be paid per shift of 8 hours at the rate of 30 per cent of one fifth of \$114.00 when on afternoon or night shift.
- (b) Shiftworkers who work on any afternoon or night shift (as defined) which does not continue for at least 5 successive afternoons or nights shall be paid at the rate of time and a half.

30. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:-
 - (i) the employee shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) the employee, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, 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) the employee 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) the employee shall not be entitled in any year to sick leave in excess of seventy six hours of ordinary working time.

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

- (v) for the purpose of administering paragraph (iv) of this subclause, an employer may, within one month of this award coming into operation or within 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 the employee has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) (i) 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.
- (ii) An employee who after two years of service commencing from the 4th day of July, 1972, has accumulated sick leave entitlements shall be entitled to be paid the following:

2 years of service	50% of accumulated sick leave
3 years of service	55% of accumulated sick leave
4 years of service	60% of accumulated sick leave
5 years of service	65% of accumulated sick leave
6 years of service	70% of accumulated sick leave
7 years of service	75% of accumulated sick leave
8 years of service	80% of accumulated sick leave
9 years of service	85% of accumulated sick leave
10 years of service	90% of accumulated sick leave
11 years of service	95% of accumulated sick leave
12 years of service	100% of accumulated sick leave

31. STRUCTURAL EFFICIENCY

- (a) Award Modernisation
 - (i) The parties to the award are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhance skills and job satisfaction and will assist positively in the restructuring process.
 - (ii) The union(s) are prepared to discuss matters raised by the employers for increased flexibility. This process is regulated at the enterprise level in accordance with Clause 14 - Enterprise Flexibility hereof. The union(s) will be readily available to discuss award changes at the enterprise level. Accordingly and in conjunction with the testing of the new award structure the parties will

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identify and discuss award changes that might provide for productivity, efficiency and flexibility improvements across the industry to be embraced within the broad structure of the award.

- (iii) The parties will co-operate to review the award to remove obsolete reference, remove ambiguities and discriminatory provision and such other matters that may be identified that will enhance the process of modernising the terms of the award.
 - (iv) The parties will co-operate positively to eliminate demarcation and optimising the multi-skilling and cross-skilling of employees at each enterprise and at the industry level.
- (b) Workplace Consultation
- (i) The development of effective participative/consultative practices is important in the process of award restructuring and can lead to advantages for both employers and employees. It is therefore recommended that participative/consultative mechanisms be implemented at the enterprise level where agreement exists between employer and employees and the appropriate union(s).
 - (ii) The process of consultative practices is a mechanism through which employees can be involved in and positively contribute towards the management decision making process. Discussions are encouraged to be reached through consultative mechanisms/practices, however, managerial prerogative is acknowledged.
 - (iii) The process of consultative practices may be used to implement the provisions of Clause 14 - Enterprise Flexibility.
 - (iv) Where Enterprise Consultative Committees have been agreed to be established, as far as is practicable employers and employees shall be at least equally represented on the Committee.

32. TRAINEE CLERK (AS DEFINED)

- (a) Trainee Clerk (as defined) shall be engaged for a period of twelve (12) months as a full time employee.

PROVIDED that a trainee shall be subject to a satisfactory probation period of up to one (1) month.

- (b) Where possible traineeship positions should be additional to normal staff numbers.

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

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- (c) A trainee clerk (as defined) will receive on-the-job training by the employer as specified in the training agreement (as defined) and off-the-job training will be provided through the Division of Technical and Further Education or such other institution approved by the Tasmanian State Training Authority.
- (d) The employer agrees that the overall training program will be monitored by officers of the Tasmanian State Training Authority and training record books may be used as part of this monitoring process.
- (e) Time spent off-the-job on training shall be allowed without loss of continuity of employment.
- (f) Where an employer continues the employment of a trainee clerk (as defined) after completion of the "traineeship period", such "traineeship period" shall be counted as service for the purpose of the award.
- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular section, overtime is involved in the operation of that section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the union.
- (i) Trainees shall not perform higher duties unless in the course of their traineeship.
- (j) Trainees shall be exempt from action in respect of industrial disputes. However the employer shall observe the provisions determined by the Tasmanian State Training Authority in respect of the use of trainee clerks (as defined) in the time of industrial disputes.

B.R. Johnson
DEPUTY PRESIDENT

30 July 1997