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TASMANIAN INDUSTRIAL COMMISSION

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

Australian Municipal, Administrative, Clerical and Services Union
(T.5582 of 1995)

BARRISTERS AND SOLICITORS AWARD

Award variation – second \$8.00 safety net adjustment

ORDER BY CONSENT

**No. 1 of 1995
(Consolidated)**

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

1. TITLE

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

2. SCOPE

This award is established in respect of Barrister and/or Solicitor.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period commencing on or after 26 July 1995.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 3 of 1991 (Consolidated), No. 4 of 1991, No. 1 of 1992, No. 1 of 1993 and No. 1 of 1994.

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

6. PARTIES AND PERSONS BOUND

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

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

the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 – Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:-

the Tasmanian Confederation of Industries.

7. DEFINITIONS

'Clerks Grade 1' – Shall include employees whose duties do not involve to any substantial degree a knowledge of legal principles or practices and whose substantial duties are those of receptionists, telephonists, filing clerks, deeds clerks, copy and audio typists, stenographers and other similar employees.

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'Clerks Grade 2' – Shall include employees whose duties require a minor amount of legal technical skill or knowledge and whose substantial duties are those of registration clerks, search clerks, accounts clerks, investment clerks, secretaries with at least 3 years' experience in a law office as a Clerk Grade 1, accounting machine operators and other similar employees.

'Law Clerks Grade 1' – Shall include employees with at least 3 years' experience in a law office as a Clerk Grade 2, whose substantial duties consist of the drawing of deeds, documents and/or costing and/or investigation of titles, settling property and/or probate and/or litigious matters under supervision.

'Law Clerks Grade 2' – Shall include employees with at least 3 years' experience as a Grade 1 Law Clerk, whose substantial duties consist of having the carriage of and settling property and/or probate and/or litigious matters who are performing for the major part of their time the preparation of all relevant deeds and documents and/or costing and/or investigating titles in connection with the aforesaid matters under supervision.

'Law Clerks Grade 3' – Shall include Law Clerks who have had at least 3 years' experience as a Grade 2 Law Clerk, whose substantial duties consist of having the carriage of and settling property and/or probate and/or litigious matters who are performing for the major part of their time the preparation of all relevant deeds and documents and/or costing and/or investigating titles, and/or interviewing clients in connection with the aforesaid matters with little supervision.

'Accountant' – Shall mean a person who has the conduct and/or control of the accounts of the office, estate accounts and trust accounts.

'Juniors' – Shall mean employees under the age of 21 years, and their progression to Clerk Grade 1 is automatic.

Progression to other grades shall be at the discretion of the employer, who shall give notice in writing of the employee's appointment.

'Traineeships' means a system under the Australian Traineeship System comprising structured on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training approved by Training Authority of Tasmania.

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

'Trainees' shall be employees bound by a Training Agreement."

8. WAGE RATES

1. CLERKS

The minimum rates of wages that may be paid to adult employees shall be the undermentioned amounts:

	Base Rate \$	Safety Net Payment \$	Weekly Wage Rate \$
(a) Grade 1 (as defined)			
First year of adult experience in this grade	310.40	16.00	326.40
Second year of adult experience in this grade	332.10	16.00	348.10
Third year of adult experience in this grade	360.50	16.00	376.50
Fourth year of adult experience in this grade	371.60	16.00	387.60
(b) Grade 2 (as defined)			
First year of adult experience in this grade	320.30	16.00	336.30
Second year of adult experience in this grade	342.40	16.00	358.40
Third year of adult experience in this grade	370.40	16.00	386.40
Fourth year of adult experience in this grade	381.50	16.00	397.50

2. LAW CLERKS

The minimum rates of wages that may be paid to adult employees shall be the undermentioned amounts:

	Base Rate \$	Safety Net Payment \$	Weekly Wage Rate \$
(a) Grade 1 (as defined)			
First year of adult experience in this grade	380.00	16.00	396.00
Second year of adult experience in this grade	395.10	16.00	411.10
Third year of adult experience in this grade	405.00	16.00	421.00
(b) Grade 2 (as defined)			
First year of adult experience in this grade	414.80	16.00	430.80
Second year of adult experience in this grade	424.70	16.00	440.70
Third year of adult experience in this grade	434.30	16.00	450.30
(c) Grade 3 (as defined)			

First year of adult experience in this grade	444.40	16.00	460.40
Second year of adult experience in this grade	454.40	16.00	470.40
Third year of adult experience in this grade	464.20	16.00	480.20
Fourth year of adult experience in this grade	474.20	16.00	490.20

3. ACCOUNTANTS

The minimum rate of wages that may be paid by employers to Accountants (as defined) shall be:

Base Rate	Safety Net Payment	Weekly Wage Rate
\$	\$	\$
479.40	16.00	495.40

An Accountant who holds qualifications acceptable for entrance as a Member to the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or kindred body having reciprocal arrangements with these Societies in addition to the appropriate wage rate hereinbefore prescribed shall be paid an additional amount of **\$11.60** per week.

SUPPLEMENTARY PAYMENT

Arising out of the State Wage Case of 24 December 1993 – Arbitrated Safety Net Adjustment Principle, the amount appearing in the column headed Supplementary Payment in subclause 1, 2 and 3 of this clause is absorbable against any overaward payment being paid by an employer as from the beginning of the first full pay period to commence on or after 25 February 1994.

4. JUNIORS

The minimum rate of wages that may be paid by employers to junior employees (as defined) shall be:

	Percentage of Grade 1, Second year Adult Weekly Wage Rate (subclause 1 of this clause) %	Weekly Wage Rate Clerks \$
16 to 17 years of age	50	174.10
17 to 18 years of age	55	191.50
18 to 19 years of age	70	243.70
19 to 20 years of age	80	278.50
20 to 21 years of age	90	313.30

5. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclauses 1, 2, and 3 hereof, no adult employee shall be paid less than the rate of **\$257.40** per week.

Provided that payments for overtime and weekend penalties prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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

9. AGED, SLOW OR INFIRM WORKERS

In the case of an employee who is unable to earn the minimum wage prescribed by this award, a lower rate may be fixed with the consent in writing of the Secretary for Labour.

10. ANNUAL LEAVE

- (a) Period of Leave -

A period of 20 working days' leave shall be allowed annually to an employee after 12 months' continuous service. In subsequent years the 12 months' continuous service shall include the period of annual leave.

- (b) Annual Leave Exclusive of Public Holidays -

(i) Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 15 hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave, time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

(ii) Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave, he shall not be entitled to be paid for any such holiday.

- (c) Broken Leave -

Annual leave may be given and taken in two periods, the lesser of which shall not be less than 5 days, unless the employee and employer otherwise agree.

- (d) Calculation of Continuous Service -

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

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

or

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

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

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

(e) Calculation of Service -

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

The annual leave shall be allowed at the rate of:

one-thirteenth of a week in respect of each completed week of continuous service.

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

Where the employer is a successor or assignee or transmittee of a business if any employee 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.

(f) Payment in Lieu Prohibited -

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

(g) Time of Taking Leave -

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

(h) Leave Allowed before Due Date -

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

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is lawfully discharged from the service of the employer before completing the 12 months' continuous service in respect of which leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 hereof.

(i) Payment for Period of Leave -

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

(j) Proportionate Leave on Termination of Service -

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

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

(k) Annual Leave Loading -

In addition to the payment prescribed under subclause (i) hereof each employee shall receive a loading of an amount equivalent to the minimum wage as prescribed in subclause 6 of Clause 8, for annual leave falling due on or after the 1st July 1975. Such loading shall not apply to proportionate leave on termination of service.

11. CASUAL EMPLOYEES

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

12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step-mother, step-father, grand-father, grand-mother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

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

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

13. CONTRACT OF EMPLOYMENT

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

Unless otherwise agreed, employment shall be terminated by:

- (a) In the case of employees in subclause 1(a) and subclause 4 of Clause 9, one week's notice.
- (b) In the case of employees in subclause 1(b) and subclause 2(a) and (b) of Clause 8, two weeks' notice.

- (c) In the case of employees in subclause 2(c) and subclause 3 of Clause 8, four weeks' notice;

or in the payment or forfeiture of such wages as are equivalent to the period of notice, as the case may be, but this shall not affect the right of the employer to dismiss an employee for misconduct or neglect of duty, in which case wages shall be paid up to the time of dismissal only.

- (d) The employer, in the event of misconduct, may as an alternative to dismissal, suspend an employee without pay. The maximum period of suspension shall be one week. Should the employee not agree to the suspension, the union may refer the matter to the Tasmanian Industrial Commission. If upon examination the Tasmanian Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term or rescind the suspension.

14. ENTERPRISE AGREEMENTS

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an enterprise agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
- (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union must be a party to the agreement.
 - (v) The relevant union shall not unreasonably oppose any agreement.
- (c) An enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:
- (i) The term of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.

- (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

15. ESTIMATING SERVICE

In estimating the number of years experience of an employee in order to ascertain the minimum rate of wages to which such employee may be entitled, Clerks Grade 1 shall count the total years of experience in the service of every employer in any of the trade or business, whether in any of the trades and/or businesses mentioned in this award, and all other employees shall count the total years of experience in the service of a barrister or solicitor. In the case of casual and/or part-time employees, a "year" of experience" shall be deemed to be 1660 hours actual service.

Proviso:

When determining margins payable to an employee attaining the age of 21 years who has been employed as a junior working under this award, experience obtained after reaching the age of 18 years shall be counted as adult experience and will entitle an employee to progress to the third year of Grade 1.

16. EXEMPTIONS

This award shall not apply to –

- (a) a legal practitioner;
- (b) Articled Clerks and Apprentices at Law;
- (c) a person without previous experience commencing work for a legal practitioner after attaining the age of 58 years;
- (d) a male person over the age of 65 years;
- (e) a female person over the age of 60 years.

17. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:- New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day. By agreement between the employer and an employee an alternative day may be observed in lieu of any of the holidays herein specified. This shall not apply in the case of Christmas Day, Boxing Day, New Years Day and Good Friday.
- (b) "**Show Day**" means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or

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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.

18. HOURS

The hours of work shall be an average of 37 ½ to be worked over a four-week cycle.

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

- (i) 7 5 hours per day.
- (ii) Four days of 8 hours and one day of 5.5 hours
- (iii) 19-day month
- (iv) In a manner which will enable an employee to accumulate up to a maximum of four rostered days off to be taken between Christmas and New Year in circumstances whereby it is the practice of the employer to close for that period.

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

PROVIDED ALWAYS that in the event that option (iii) above is adopted, the ordinary hours of work shall be an average of 38 per week over a 4-week cycle.

Subject to the average of 37.5 hours over a 4 week cycle, by agreement between an employer and an employee, up to 10 hours may be worked on any day at ordinary time.

19. OCCUPATIONAL SUPERANNUATION

(a) Contributions

An employer shall make a contribution equivalent to 3% of ordinary time earnings in respect of all eligible employees as from 1 December 1989. Such earnings shall exclude overtime and allowances in the nature of a reimbursement (such as meal money).

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.

(b) Eligible Employees

- (i) An eligible employee shall mean an employee with at least 3 months' continuous service with an employer subject to this award.
- (ii) In the case of eligible casual and part-time employees, contributions shall be made where employees work at least 37½ hours during a fund billing months.

(c) Fund

Contributions shall be made into TASPLAN, CARE or any other Occupational Superannuation Fund provided that it conforms to and is approved by the standards of the Occupational Superannuation Commission.

- (d) Notwithstanding anything elsewhere contained in this clause, an employee who belongs to the religious fellowship known as Brethren and who holds a certificate issued by a person authorised to do so in accordance with an Act may nominate an alternative complying fund into which the contributions shall be paid.

20. OVERTIME

- (a) subject to the exceptions specified in Clause 18 – Hours, overtime at the rate of time and a half for the first four hours and double time thereafter shall be paid for all time worked in excess of 8 hours per day or 150 hours (152 hours in the case of a nineteen-day month) in a 4-week cycle.
- (b) Junior - no employee under the age of 18 years shall be required to work overtime unless he or she so desires.
- (c) Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime. Provided that such time off shall be paid at the ordinary rate.

21. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

- (i) any period of leave taken in accordance with this clause;
- (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 subclause (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

At the time specified in subclause (a) 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.

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

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

- (iv) Nothing in this part shall be constructed as requiring an employer to engage a replacement employee.

PART B - PATERNITY LEAVE

- (a) Nature of Leave

Paternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

'Child' means a child of the employee 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 their 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.

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 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:

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

(k) Return to Work after Paternity Leave

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

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

(l) Replacement Employees

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

'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.

(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 or 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 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.
- (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.
- (i) Adoption Leave and Other Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period of 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,
- (ii) Before an employee 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 constructed as requiring an employer to engage a replacement employee.

PART D - PART-TIME WORK

(a) Definitions

For the purpose 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.

'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.

'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.

(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 period 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 period 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 of 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.
- (f) Transitional Arrangements - Annual Leave
- (i) An employee working part-time under this part shall be paid for and 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 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 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.
- (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 ration 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.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this clause.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a) (v) hereof.

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

22. PART-TIME

- (a) A 'part-time employee' is one engaged to regularly work for less hours per day or week than those prescribed for full-time employees.
- (b) The wage rates payable per hour shall be 2/75ths. of the relevant rates above set out.
- (c) Part-time employees shall be entitled pro rata to annual leave, holidays and sick leave as prescribed in Clauses 10 - Annual Leave, 17 - Holidays with Pay and 26 - Savings hereof.

23. PAYMENT FOR HOLIDAYS

- (a) Payment for the holidays mentioned in Clause 17 – Holidays with Pay hereof, which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, where if it were not for such holiday, he would have been at work.
- (b) All work performed on any of the prescribed holidays in Clause 17 - Holidays with Pay hereof or on a Saturday or a Sunday shall be paid at the rate of double time with a minimum payment as for 3 hours worked.

24. PAYMENT OF WAGES

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

25. REST PERIOD

Employees shall be entitled to a morning and afternoon tea break. Such break shall be taken at the work station without undue interruption to the work flow.

26. SAVINGS

Nothing herein contained shall be taken to reduce the wage rate of any employee who was in receipt of a higher wage rate at the date of this award.

27. 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) he shall within 30 minutes of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (ii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iii) he shall not be entitled in any year to sick leave credit in excess of 2 weeks of ordinary working time. 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.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iii) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee, and subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year;
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

28. STRUCTURAL EFFICIENCY

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

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

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

This provision shall not deny such employee any award entitlement which might be applicable for performing work at a higher classification, nor should the provisions

enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

29. TEA MONEY

- (a) An employee required to work overtime for more than one and a half hours shall either be supplied with an adequate meal by the employer or be paid **\$5.00** meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Secretary for Labour.
- (c) The payment prescribed in subclause (a) shall be made on the day on which the overtime is worked.

30. TRAINEESHIPS (ATS)

- (a) Trainees shall be engaged for a period of twelve months as full-time employees, provided that trainees shall be subject to a satisfactory probation period of up to one 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.
- (c) A trainee will receive on-the-job training by the employer (or employers) as specified in the Training Agreement and off-the-job training will be provided through the Division of Technical and Further Education or such other institution approved by the Training Authority of Tasmania. Provided that the total of on and off-the-job training will not exceed five days per week.
- (d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.
- (e) Time spent off-the-job on training shall be allowed without loss of continuity of employment.
- (f) Where the employment of a trainee by an employer is continued after completion of the "traineeship period", such "traineeship period" shall be counted as service for the purpose of the award.
- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period overtime is involved in the operation, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The weekly wages payable to trainees (ATS) shall be determined by multiplying the appropriate junior rate as specified in Clause 8 – Wage Rates, subclause 4 of this

award by 39 (which represents the actual number of weeks spent on-the-job) and dividing that sum by 52.

The wage rate determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines.

This figure is to be adjusted from time to time in accordance with National Wage Case Decisions.

PROVIDED that trainees' rates shall be calculated in multiples of ten cents with any result of five cents or more being taken to next highest ten cent multiple.

- (i) Preference in continuation in employment shall be given to trainees should vacancies occur at the successful completion of the traineeship.
- (j) The union shall be afforded reasonable access to trainees for the purposes of explaining the role and functions of the union.
- (k) Trainees shall not perform higher duties unless in the course of their traineeship.
- (l) Trainees shall be exempt from action in respect to industrial disputes.

31. TRAVELLING TIME

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

R.K. Gozzi
COMMISSIONER

14 August 1995