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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or variation of award

Tasmanian Trades and Labor Council
(T12940 of 2007)
Private Sector Awards
Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to \$14.10 - State Minimum Wage rate determined at \$527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

HORTICULTURISTS AWARD

ORDER

**No. 2 of 2007
(Consolidated)**

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

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1. TITLE

This award shall be known as the "Horticulturists Award".

2. SCOPE

This award is established in respect of the industry of landscape gardening.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation on and from the first full pay period commencing on or after 1 August 2007.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Horticulturists Award No. 2 of 2006 (Consolidated), and No. 1 of 2007.

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) The Australian Workers' Union, Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope; and
 - (ii) 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 has been determined:
 - (i) The Hop Producers' Association of Tasmania and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope;

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- (ii) The Retail Traders Association of Tasmania and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope; and
- (iii) the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Horticultural tradesperson' means a qualified landscape gardener or greenkeeper who, subject to the proviso contained in Clause 8 – Wage Rates, subclause 2 – Apprentices, has successfully completed a recognised apprenticeship of not less than four years in a branch or branches of the horticulture trade or equivalent Australian Qualifications framework, Level 3; Certificate.

'Show Day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or 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.

'Union' means a registered organisation of employees listed in Clause 6 - Parties and Persons Bound of this award.

'Show Day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

8. WAGE RATES

1. HORTICULTURAL TRADESPERSON

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

Classification	Base Rate	Safety Net Adjustment	Weekly Wage Rate
Horticultural Tradesman (as defined)	\$ 368.80	\$ 201.70	\$ 570.50

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2. APPRENTICES

The minimum weekly wage rates that may be paid to apprentices will be the undermentioned percentages of the total weekly wage rate payable to a Horticultural Tradesperson as prescribed in subclause 1 of this clause.

	%
1 st year	42
2 nd year	55
3 rd year	75
4 th year	88

PROVIDED THAT an apprentice horticultural tradesperson who attains the relevant qualification in accordance with the relevant policies, procedures and provisions of the *Vocational Education and Training Act 1994* will then be paid the weekly wage rate of a Horticultural Tradesperson as prescribed in subclause 1 of this clause.

3. GENERAL

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

Classification	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(i) Fork Lift Driver	334.00	201.70	535.70
(ii) Motor Lorry Driver	334.00	201.70	535.70
(iii) An employee having less than one month's continuous service with their present employer	298.70	201.70	500.40
(iv) Leading hand, i.e. an employee who directs or supervises the work of:			
2 to 6 employees			\$15.80 per week extra
7 to 10 employees			\$16.70 per week extra
11 to 19 employees			\$25.80 per week extra
20 or more employees			\$33.90 per week extra

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4. JUNIOR EMPLOYEES - OTHER THAN APPRENTICES

The minimum weekly wage rate that may be paid to junior employees shall be the undermentioned percentages of the adult rate for the classification upon which they are employed.

	Percentage of Adult Weekly Wage rate %
Under 16 years of age	45
16 to 17 years of age	50
17 to 18 years of age	60
18 years of age and over	100

5. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by subclause 6 - Supported Wage System is \$527.10 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i)

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(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2007 State Wage Case Decision (T12940 of 2007) and all previous safety net and state wage case adjustments.

6. PIECE-WORK

Piece-work rates may be fixed by the employer and the employee at such rates approved by The Australian Workers' Union, Tasmania Branch as will enable the average employee working the ordinary hours prescribed herein to earn at least twelve and a half percent above the prescribed time rate. Such rates shall, when fixed, be paid in lieu of the said time rates.

7. SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

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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 subclause:

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

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

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

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(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 subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 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 subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace adjustment

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

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(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 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 paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

9. ALLOWANCES

(a) Shift Allowance

All time worked outside of the hours prescribed in Clause 19 – Hours of Work subclause (a) of this award shall have a shift loading of \$2.10 for each hour worked.

The extra rates prescribed by this clause are payable only during the employees' ordinary working hours and are not cumulative on the penalty rates prescribed in Clause 25 - Overtime, of this award.

(b) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the *Vocational Education and Training Act 1994* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.60 per week.

Provided that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

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(c) Motor Cycle and Bicycle Allowance

If the nature of the employment requires an employee, on the instructions of the employer, to use a motor cycle or bicycle in the course of his work, such motor cycle or bicycle being the property of the employee, he shall be paid accordingly \$1.95 per day with fuel supplied for the motor cycle and 80 cents per day for the use of the bicycle.

10. AMENITIES

Employers shall provide for the use of their employees suitable washing facilities, change rooms, dining accommodation, and sanitary convenience (separate for the sexes where necessary).

Any dispute as to whether suitable amenities have been provided as aforesaid shall be referred to the Secretary for Labour whose decision shall be final.

11. ANNUAL LEAVE

(a) Period of Leave.

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

(b) Payment in Lieu Prohibited.

Payment shall not be made or accepted in lieu of annual leave except as provided in subclause (c) of this clause.

(c) Proportionate Leave on Termination of Service

Where an employee lawfully leaves the employment or is dismissed (except for neglect of duty or misconduct) before the expiration of twelve months' service but on or after completing one month's service he or she shall be paid thirteen and one third hours for each completed month of continuous service.

(d) Payment for Period of Leave.

(i) Each employee before going on leave shall be paid at the rate at which the employee was ordinarily employed immediately prior to the commencement of the leave or the termination of the employment as the case may be.

In addition thereto, all employees, other than casual employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, subclause 5 - Minimum Wage, of this award.

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- (ii) Payment in the case of piece-work shall be at time rates.
- (e) Annual Leave Exclusive of Public Holidays.
 - (i) Where any holiday prescribed by Clause 18 - Holidays with Pay of this award, falls within the period of an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.
 - (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.
- (f) Time of Taking Leave.
 - (i) The annual leave provided by this clause shall be allowed and shall be taken in one period or by agreement between the employer and employee in more than one period.
 - (ii) When the right to annual leave has accrued the employer shall give not less than one week's notice to the employee concerned of his intention to grant such leave.
- (g) Calculation of Continuous Service.

For the purpose of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident.

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.

12. BEREAVEMENT LEAVE

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

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

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

(b) Unpaid Bereavement Leave

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

(c) Casual Employees

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

12. CASUAL EMPLOYEES

Casual employees shall be paid 20 per cent in addition to the rates prescribed for weekly employees. This payment shall be in lieu of annual leave, personal leave, and public holidays prescribed herein. Casual employees shall be paid at an hourly rate determined by applying to the appropriate weekly rate plus 20 per cent, the divisor 40.

14. ENGAGEMENT

Employees (other than casual employees) shall be deemed to be hired by the week, subject however to the following:

- (a) an employee who absents himself from duty (public holidays as prescribed by Clause 18 - Holidays with Pay and sickness as prescribed by Clause 28 - Personal Leave of this award excepted) shall not be entitled to payment in respect of time of such absence;

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- (b) employment shall be terminated by one week's notice given by either party, which notice may be given at any time, provided that the termination shall take effect at the end of the day's work, or by payment or forfeiture (as the case may be) of one week's wages. Nothing in this subclause shall prevent an employer dismissing an employee for misconduct or neglect of duty in which case payment shall be made up to the time of dismissal only;
- (c) no employer shall terminate an employee's engagement merely for the purpose of depriving an employee of his or her right to payment for a public holiday specified in Clause 18 - Holidays with Pay of this award;
- (d) no employer shall enter into any contract for the carrying on of any of the operations or functions to which this award applies by any contract unless the contract contains a clause binding the contractor to pay to employees the rates and observe the conditions set out in this award in respect of the work contracted for, and unless a clause is inserted in any such contract to the effect that the employer can terminate the contract if there is any breach of the conditions referred to.

The employer shall assume responsibility to the extent of any monies due by him to the contractor for payment of all wages due by the contractor to employees for such work.

15. EXISTING PRACTICES

- (a) Nothing in this award shall be taken to reduce the wages of an employee who is at the date hereof in receipt of a wage in excess of that herein prescribed.
- (b) Employees working in any branch of the industry where the ordinary hours of employment are less than 40 per week at the date hereof shall not have their ordinary hours increased as a result of this award.

16. FARES AND TRAVELLING

When an employee is required to work away from his usual place of employment and is required to commence work at the normal time the employee shall be paid for all time in excess of the time normally spent travelling to and from work.

Where an employee is required to use his own vehicle to travel to work at a location in excess of the distance he would normally travel, he shall receive 24 cents per kilometre for each kilometre travelled, with a minimum payment of \$4.45 per day.

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17. FIRST AID EQUIPMENT

A suitable first-aid kit shall be kept at all places of work, and a qualified first-aid man (if available) shall be appointed to take charge of first-aid equipment and to attend to any person injured during working hours. Such first-aid man to be paid \$1.90 per day in addition to his ordinary wages where there are more than 3 persons employed

18. 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, 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 any employer and his employees, other days may be substituted for the said days or anyone of them.

- (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 holiday, he 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) Employees who are employed on piece-work shall be paid a day's wages at time work rates for any of the aforementioned holidays when not required to work on any of such days or a day's wages at time work rates in addition to piece-work rates for work performed on any such day.
- (e) If any of the holidays mentioned in subclause (a) of this clause fall on a day other than a usual working day another day shall be allowed in lieu thereof.
- (f) Where consequent upon any visit to Australia by Her Majesty the Queen or any other member of the Royal Family a public holiday is proclaimed by the Governor-in-Council or otherwise gazetted by the Tasmanian Government under State Act throughout the State or part thereof and under the Tasmanian Industrial Commission such day shall within the defined locality be deemed to be a holiday for the purposes of this award.

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19. HOURS OF WORK

- (a) The hours of work shall be 38 per week worked between 6:00 am and 6:00 pm Monday to Friday.
- (b) Hours of work shall be arranged in accordance with one or more of the methods set out below:
 - (i) by employees working less than 8 ordinary hours on each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more day each week; or
 - (iii) by fixing one week day on which all employees will be rostered off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during each particular work cycle so that each employee has one week day off during each such cycle; or
 - (v) by banking the days accrued to be taken as days off in accordance with (iii) and (iv) above to be taken at a time designated by management; or
 - (vi) by any other method agreed between the employer and employee(s) provided that the ordinary hours of work do not exceed an average of 38 over an agreed and specified work cycle.
- (c) Rostered Day Off Falling on Holiday With Pay
 - (i) An employee entitled to a rostered day shall not have such day off rostered on a holiday as specified in Clause 18 - Holidays With Pay.
 - (ii) **PROVIDED** that in the event that a public holiday is prescribed after notice is given to such employee of the taking of the rostered day off and such public holiday falls on the day the employee is to take off, the employer shall allow the employee to take such day off on an alternative day upon which such employee is normally rostered to work ordinary hours.
 - (iii) Where an employee is sick or injured on the day rostered off in accordance with this clause the employee shall not be entitled to personal pay nor will the employee's personal pay entitlement be reduced as a result of such sickness or injury that day.
- (d) At each establishment an assessment should be made as to which method of implementation best suits that establishment and the proposal shall be discussed with employees concerned, the objective being to reach agreement on the method of implementation.

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- (e) Employees may be required to work in excess of 8 ordinary hours per day but not more than 10 ordinary hours per day.
- (f) Circumstances may arise where different methods of implementation of the 38 hours week apply to various groups, individuals or sections of employees in the plant or establishment concerned.
- (g) Where the method of implementation adopted is in accordance with subclauses (a)(iii), (iv) or (v) of this clause the wages paid each week for ordinary hours shall be paid so that in each week when 40 hours (or more) are worked, the time in excess of 38 hours shall be kept in hand and paid to the employee in the pay week(s) that the rostered day(s) off occur; to enable an averaging of payments for ordinary time to occur over the particular work cycle.
- (h) The spread of hours or daily hours prescribed by subclause (a) of this clause may be altered as to some or all employees by agreement between the employer and employee concerned.

20. LOSS OF CLOTHING DUE TO FIRE

The employer shall be responsible up to a maximum of \$669.00 for an employee's clothing which may be destroyed by fire in a changing house or other shelter, provided that such destruction is not in any way caused by the employee's own act or neglect.

21. MEAL INTERVAL AND ALLOWANCE

- (a) A meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.
- (b) An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$14.10.
- (c) An employee required to work through his customary meal break shall be paid at overtime rates until such time as the meal break is taken.

22. MIXED FUNCTIONS

An employee engaged for 2 hours or more of one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day. If for less than 2 hours of one day he shall be paid the higher rate for the time so worked.

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23. NOTICE BOARDS

Each employer shall permit a notice board of reasonable dimensions to be erected in a prominent position on his plant so that it will be reasonably accessible to employees working under this award. Accredited union representatives shall be permitted to put on the notice board union notices, signed or countersigned by the representatives posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

24. NOTIFYING CASUAL EMPLOYEE HE IS NOT WANTED

If a casual employee is not informed before he leaves the job at the end of his day's work that he is not required to work on the next day and such employee attends for work and is not put to work on that day he shall be paid a minimum as for 4 hours. Provided that unless the unemployment is due to circumstances over which the employer has no control he shall be paid as for a full day's work.

25. OVERTIME

Subject to subclause (a) of Clause 19 – Hours of Work, all hours worked in excess of 8 hours on any one day Monday to Friday inclusive shall be paid at the rate of time and one half for the first 2 hours and double time thereafter.

26. PARENTAL LEAVE

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

(a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
 - (1) any period of leave taken in accordance with this clause;
 - (2) any period of part-time employment worked in accordance with this clause; or

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

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- (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
 - (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
 - (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
 - (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
 - (vi) Special Maternity Leave
 - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

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(vii) Transfer to a safe job

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

(d) Paternity Leave

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

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(e) Adoption leave

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

(f) Parental Leave and Other Entitlements

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

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(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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

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(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

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

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(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

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

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

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

Unless other wise agreed between employee and employer, and consistent with the provisions of this clause:

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

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

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

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

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

(j) Redundancy

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

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

(k) Right To Request Variation To Parental Leave Provision

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

(1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;

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- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
 - (3) to return from a period of parental leave on a part-time basis until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.
 - (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (l) Communication During Parental Leave
- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
 - (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
 - (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

27. PAYMENT OF WAGES

- (a) For weekly employees payment of wages shall be made at not longer than fortnightly intervals unless otherwise agreed to between an employer and his employee. An employee who is kept waiting for his pay longer than 15 minutes after the cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.

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- (b) For casuals and piece-workers (unless otherwise mutually arranged) payment shall be made not later than 2 hours after the cessation of work. An employee who is kept waiting for his pay longer than 2 hours after cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.
- (c) The employer shall pay at any time, on the written signature of the employee, any obligatory contributions or donations out of the amount for the time being due to the employee.

28. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in subclause (j).

(a) Definitions

The term 'immediate family' includes:

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

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
- (iii) he shall not be entitled in any year (whether in the employment of one employer or of more), to personal leave credit in excess of 2 weeks of ordinary working time. Provided that during the first three months of employment, personal leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer;

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- (iv) for the purpose of administering paragraph (iii) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (c) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (b)(iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.
- (d) An employer shall not be required to make any payment in respect of accumulated personal leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.
- (e) Personal Leave for Personal Injury or Sickness

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

- (f) Personal Leave to Care for an Immediate Family or Household Member
 - (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.
 - (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

- (g) Employee Must Give Notice

The employee shall, wherever possible, inform the employer of his inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

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(h) Evidence Supporting Claim

- (i) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed;
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(i) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (g) and (h) are met.

(j) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (g) and (h) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

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29. PREFERENCE TO UNIONISTS

Preference of employment shall be given to financial members of The AWU-FIME Amalgamated Union, Tasmania Branch or where non-unionists apply for employment to those who give an undertaking to join the union when approached to do so by an accredited union representative.

30. PROTECTIVE CLOTHING

- (a) If an employee is required to work in a wet place or in heavy rain he shall be provided with wet weather gear and suitable head covering so as to protect him from getting wet.
- (b) The employer shall supply to each employee on commencement 2 pairs of overalls and one pair of work boots.

Replacement of clothing and boots shall be on a fair wear and tear basis upon production of the unserviceable item.

- (c) The clothing shall remain the property of the employer and the current issue shall be returned to the employer on termination of employment or prior to the next issue.

31. RESOLUTION OF DISPUTES

Any industrial dispute arising during the currency of this award shall be dealt with as follows:

- (a) the matter should first be discussed between the employee and his immediate supervisor. At the employee's option his delegate may also be present;
- (b) if not settled, the matter shall be submitted by the shop steward or union representative to the industrial officer or other appropriate officer of the employer;
- (c) if not settled, the matter shall be formally submitted by the State Secretary or other appropriate official of the union concerned to the employer;
- (d) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, and officials of the unions and their members, will take all possible action to settle any dispute within 7 days of notification of the dispute to the employer;
- (e) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

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32. RIGHT OF ENTRY

Right of entry for a duly accredited representative of The AWU-FIME Amalgamated Union, Tasmania Branch shall be in accordance with the provisions of section 77 of the *Industrial Relations Act 1984*.

33. SATURDAY, SUNDAY AND PUBLIC HOLIDAY WORK

- (a) All work performed on a Saturday shall be paid for at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) All work performed on a Sunday shall be paid for at the rate of double time.
- (c) All work performed on a public holiday prescribed in Clause 18 - Holidays with Pay of this award, payment shall be made at the rate of time and one half plus a day in lieu.

Provided that all piece-workers, whether employed on a weekly basis or otherwise, required to work on a Saturday or Sunday shall be paid for all piece-work performed at ordinary piece-work rates in addition to the ordinary time work rate for the classification under which he is employed for the time so worked.

The employee shall be paid for all piece-work performed on any of the holidays prescribed in Clause 18 - Holidays with Pay of this award, at ordinary piece-work rates in addition to time and one half work rate for the classification under which he is employed for the time so worked.

34. SMOKO

All employees shall be allowed a paid period smoko of 10 minutes each morning and afternoon.

35. SPECIAL RATES

Employees who are engaged in spraying, sowing, or spreading of fertiliser, handling of chemicals, or threshing or cleaning seeds indoors shall be provided by the employer with protective clothing (including where necessary, respirator and/or goggles) and be paid \$0.58 per hour extra while so engaged with a minimum payment as for 4 hours on any one day.

Any dispute under this clause shall be referred to the Tasmanian Industrial Commission, whose decision shall be final.

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36. TOOLS AND EQUIPMENT

The employer shall provide all tools and equipment required for the proper performance of the work, and the employee on leaving shall return all tools and equipment to the employer during working hours.

37. WET PAY

If an employee is required to work in a wet place or in heavy rain he shall be provided with gumboots or oilskins and/or suitable head covering so as to protect him from getting wet.

If he is not so provided so as to protect him from getting wet he shall be paid therefore \$4.40 per day extra for each day or part of a day on which he is not provided with waterproof clothing.

P C Shelley
DEPUTY PRESIDENT

24 July 2007