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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T10886 of 2003)

Private and Public Sector Awards

**Tasmanian Trades and Labor Council**

(T10887 of 2003)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T10927 of 2003)

Private and Public Sector Awards

**Tasmanian Trades and Labor Council**

(T10928 of 2003)

Private Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT R J WATLING

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case July 2003 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002003 – Safety Net Review – Award rates increased by \$17 per week up to and including \$731.80, \$15 per week in award rates above \$731.80 per week – Wage related allowances increased by 3.24% - Meal allowances increased to \$12.30 – Supported Wage increased to \$60 per week – Operative date ffpp 1 August 2003 – State Minimum Wage determined at \$448.40 – s.35(1)(b) – Model Reasonable Hours Clause approved – Awards will be varied on application.**

**ARCHITECTS (PRIVATE INDUSTRY) AWARD**

**ORDER BY CONSENT**

**No. 1 of 2003  
(Consolidated)**

CLAUSE 1 OF PART III - SALARIES AND RELATED MATTERS IS VARIED AND THE AWARD IS CONSOLIDATED

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## **PART I - APPLICATION AND OPERATION OF THE AWARD**

### **1. TITLE**

This Award shall be known as the Architects (Private Industry) Award.

### **2. INDEX**

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### **3. SCOPE**

This award applies to the whole of Tasmania to any person or persons, or class of persons employed in architectural duties as hereinafter defined but not including:

Architects employed in State Government Departments or Instrumentalities, Local Government Authorities or Port Authorities and/or Marine Boards.

### **4. DATE OF OPERATION**

This Award shall come into operation on the first full pay period commencing on or after 1 August 2003.

### **5. AWARD INTEREST**

- (a) The following employee organisation has an interest in this award under Section 63(10) of the Industrial Relations Act 1984:
- The Association of Professional Engineers, Scientists and Managers, Australia
- (b) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the Industrial Relations Act 1984
- the Tasmanian Chamber of Commerce and Industry Limited
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the Industrial Relations Act 1984
- the Tasmanian Trades and Labor Council

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## **6. SUPERSESSION**

This award incorporates and supersedes the Architects (Private Industry) Award No. 2 of 2002 [Consolidated]

## **7. DEFINITIONS**

**'Architectural duties'** shall mean duties carried out by Architects, Experienced Architects, Graduates of Architecture and Students of Architecture.

**'Architect'** shall mean an employee who is registered under the Architects Act 1929.

**'Experienced Architect'** shall mean a Graduate of Architecture who is performing the duties as defined for Level 2 - Experienced Architect.

**'Graduate of Architecture'** shall mean an employee who (a) has passed an examination of a university, college, school or public institution for the training of architects, the passing of which examination is recognised by the Council of the Royal Australian Institute of Architects as conferring an entitlement to apply for admission to corporate membership of that Institute and (b) is working towards gaining registration under the Architects Act 1929.

**'Student of Architecture'** shall mean an employee who is normally enrolled in a course of Architecture and who is employed to gain experience in the practice of Architecture.

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## **PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS**

### **1. DEFINITIONS**

**'Casual employee'** shall mean an employee engaged by the hour on an irregular basis to meet short-term labour needs.

**'Continuing employment'** means the employment of a person where no fixed ending date for employment was determined at the time of engagement.

**'Fixed-term employment'** means the employment of a person where an ending date for employment is agreed at engagement and where the need to employ arises in the following circumstances:

- to provide specialised skills and competencies not normally needed in the workplace
- to provide additional support for a project or other work of limited duration;
- to replace an employee temporarily absent from the workplace through long service leave, long term illness or injury, parental leave, study leave or other similar absence.

**'Full-time employee'** shall mean an employee who is engaged to work the ordinary hours prescribed in Part V - HOURS OF WORK AND OVERTIME, Clause 1 - Hours of Work of this award on a continuing employment basis.

**'Part-time employee'** shall mean an employee who is engaged to work less than the ordinary hours prescribed in Part V - HOURS OF WORK AND OVERTIME, Clause 1 - Hours of Work of this award on a continuing employment basis.

### **2. EMPLOYMENT CATEGORIES**

#### (a) General

An employee shall be engaged as a full-time, casual, part-time or fixed-term employee.

#### (b) Casual

- (i) A casual employee (as defined) for working ordinary hours shall be paid per hour one thirty-eighth of the appropriate weekly wage rate set out in Part III - Salaries and Related Matters, Clause 1 - Salary Rates. In addition thereto a casual employee shall receive 25% 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 holidays with pay.

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(ii) A casual employee shall be entitled to a minimum of three hours pay in respect of each engagement, unless varied by agreement between the employer and employee prior to the employee commencing employment.

(iii) Part-time

A part-time employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

(c) Part-time

A part-time employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

(d) Fixed-term

(i) A fixed-term employee may be engaged to work less hours each week than the ordinary hours prescribed in Part V – HOURS OF WORK AND OVERTIME, Clause 1 - Hours of Work

(ii) A fixed-term employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

### **3. CONTRACT OF EMPLOYMENT**

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

This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

(b) Termination of Employment

Employment shall be terminated by one month's notice by either party, or by the payment by either party of an amount equal to a month's salary, as the case may be.

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**PROVIDED that:**

- (i) the period of notice to be given to or by an employee with up to six months' service with a particular employer shall not be less than two weeks or the amount of payment to be made by either party shall be an amount equal to two weeks salary;
- (ii) in case of an employee over 45 years of age and with a minimum of two years' service with a particular employer the minimum notice shall be five weeks or an amount equal to five weeks salary;
- (iii) nothing herein contained shall affect the right of the employer to dismiss an employee without notice for gross neglect of duty or serious and willful misconduct
- (iv) the notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned;
- (v) this clause shall not apply to casual employees.

**PART III - SALARIES AND RELATED MATTERS**

**1. SALARY RATES**

(a) Graduates of Architecture, Experienced Architects and Registered Architects  
 The minimum annual salaries payable for the performance of professional, architectural duties as defined shall be:

	Base Rate Relativity %	Base Rate \$	Minimum Rates Adjustment \$	Safety Net Adjustment \$	Annual Salary \$
Level 1 Graduate Architect Entry	130	28948	3105	2600	34653
1 <sup>st</sup> Increment		30848	3239	2704	36791
2 <sup>nd</sup> Increment		33044	3181	2704	38929
Level 2(a) Experienced Architect	160	34870	3495	2600	40965
Level 2(b) Experienced Architect Entry	160	34870	3495	2600	40965
Ist Increment		36139	3673	2600	42412



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(vi) Existing Rights and Privileges

No person currently employed as a Student of Architecture on the date that this Award is made shall suffer a reduction in salary as a consequence of the coming into effect, on that date, of the Student of Architecture classification structure and rates.

(vii) Employment shall be under the supervision of a registered architect.

A formal record of employment signed by each employer as applicable shall be maintained by the student.

## **2. CLASSIFICATION DESCRIPTORS**

### **Level 1 – Graduate of Architecture**

The graduate undertakes initial professional architectural tasks of limited scope and complexity, such as minor phases of broader assignments, in office, and site work.

Under supervision from higher-level professionals as to the method of approach and requirements, the graduate performs normal professional work and exercises individual judgement and initiative in the application of architectural principles, techniques and methods.

In assisting more senior professionals by carrying out tasks requiring accuracy and adherence to prescribed methods of architectural analysis or design, the graduate draws upon advanced techniques and methods learned during and after the undergraduate course.

Training, development and experience using a variety of standard architectural principles and procedures enable the graduate to develop increasing professional judgement and apply it progressively to more difficult tasks at Level 2.

Decisions are related to tasks performed, relying upon precedent or defined procedures for guidance. Recommendations are related to the solution of problems in connection to the tasks performed.

Work is reviewed by higher-level professionals for validity, adequacy, methods and procedures. With professional development and experience, work receives less review, and the graduate progressively exercises more individual judgement until the level of competence at Level 2 is achieved.

### **Level 2(a) – Experienced Architect**

Following development through Level 1 he/she is an Experienced Architect who plans and conducts professional architectural work without detailed supervision, but with guidance on unusual features and who is usually engaged on more responsible architectural assignments requiring professional experience.

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## **Level 2(b) – Registered Architect**

Following development through Level 1 he/she is a Registered Architect who plans and conducts professional architectural work without detailed supervision, but with guidance on unusual features and who is usually engaged on more responsible architectural assignments requiring professional experience.

### **3. DISCLOSURE OF QUALIFICATIONS**

- (a) An employee who is employed in or who is an applicant for employment covered by this Award shall if and when required so to do by his/her employer or an employer to whom he has applied for employment produce to his/her employer or that employer written evidence that he/she is registered or has achieved academic qualification in an approved course (as the case may be).
- (b) Where an employee has failed to produce to his/her employer or to an employer whom he/she has applied for employment written evidence that he/she possesses or has acquired the qualification and subsequently and/or registration claims to be entitled to payment at the rate prescribed by this Award for his/her employment by that employer in respect of any period during which he/she has failed to produce that evidence it shall be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee possessed or had acquired the qualifications of an Architect or Graduate of Architecture (as the case may be).

### **4. NOTIFICATION OF SALARY AND CLASSIFICATION**

An employee on engagement shall be advised in writing of his/her salary and any normal practice as regards remuneration reviews, where such remuneration is in excess of Award prescription. Upon request an employer shall advise an employee of his/her Award classification which the employer considers to be appropriate having regard to the duties performed by the employee concerned.

### **5. PROFESSIONAL DEVELOPMENT**

- (a) General

In order to progress through the classification structure as set out in Part III - Salaries and Related Matters, Clause 1 – Salary Rates an employer may permit an employee to attend a conference, seminar, or course which will assist the employee to keep himself/herself informed of construction, administration and/or technological developments of relevance to the business of the employer.

Where the conference, seminar, or course has been approved by the employer and permission has been granted by the employer for the employee to attend, the

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employer shall reimburse employee costs and shall continue the payment of salary to the employee. Reimbursement under this subclause shall not apply where the employee and the employer mutually agree on other equivalent arrangements. Provided that in all cases where permission to attend has been granted, the employee shall suffer no loss of continuity of service as a result of such attendance.

The employer shall encourage the further professional development of employees and where the employees are appropriately qualified, actively endeavour to provide employees with the opportunity to undertake a broad range of Architectural duties including: design, design development, documentation, site inspections, contract administration and office administration.

(b) Students or Graduates Study Leave

A student or graduate of architecture shall after due notification to his/her employer be allowed leave of absence with pay for study and attendance at examinations which comply with the Architects Registration Board's Requirements. The duration of which is not to exceed four days maximum time for study and each examination for which he presents himself/herself.

A student of architecture shall after mutual agreement with the employer be allowed:

- To attend lectures and/or organised classes at a university part-time or other institution as part of a course of instruction as conducted pursuant to the above which are necessary to enable the employee to qualify as a graduate architect.
- To attend a full-time course of architectural education recognised by the Architects Registration Board.
- Provided that where the duration of such course, lectures or classes exceeds a total of three weeks in any one year. The employer shall be entitled to grant such leave without pay.

## **6. PROGRESSION**

(a) From Graduate of Architecture to Registered Architect

- (i) In the acquisition of competencies leading to admission as a Registered Architect the Graduate of Architecture must fulfill the minimum requirements for entry to the Architectural Practice Examination (APE).

Included in this is the requirement that the prospective candidate has had a range of practical experience at the levels as set out in the Prescribed Competencies, which are outlined in paragraph (iii) hereof, and which have been drawn from the National Competency Standards in Architecture (NCSA) adopted by the Architects Accreditation Council of Australia (AACA). This

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mandatory practical experience must be obtained in an architectural, or other approved office, under the direction of an architect. Further, the details must be maintained in the Architectural Accreditation Council of Australia (AACA Log Book) and documented against each of the Prescribed Competencies addressed in the Architectural Practice Exam (APE).

(ii) Annual Review Process

In furtherance of the Graduate of Architectures' progress towards the obtaining of the mandatory experience based on the Prescribed Competencies, there shall be an annual review process. As a part of this review process, progress for the previous 12 months shall be reviewed and objectives for the next 12 month period should be mutually agreed, and set out in writing. This will also include any necessary training which the employee will be expected to undertake in order to fulfil the requirements of their position. The cost of such approved training shall be borne by the employer.

If the employee has reasonably met the objectives arising out of the annual review this shall be confirmed in writing by the employer to the employee and the employee shall progress to the next increment within the Level 1 salary range.

(iii) Prescribed Competencies

The Prescribed Competencies against which the experience is to be documented are as follows;

- (Element 2.2.2) Prepare architectural drawings with regard to the location, extent of building elements, components, finishes, fittings and systems.
- (Element 2.2.4) Coordinate the documentation of the project.
- (Element 3.1.2) Establish site conditions, site related requirements and limitations and existing facilities.
- (Element 3.1.4) Assess applicable codes, regulations and legislation
- (Element 3.2.3) Prepare preliminary project evaluations, programs and feasibility studies.
- (Element 3.2.5) Establish and coordinate specialist consultants, contractors and suppliers.
- (Element 3.3.1) Administer the project contract.

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(b) Registered Architect

(i) A Registered Architect shall move from the first year rate to the second and third year rates upon the demonstration of competencies as set out in the National Competency Standards in Architecture (NCSA) adopted by the Architects Accreditation Council of Australia (AACA).

(ii) Annual Review Process

In furtherance of the Registered Architects' progress towards the acquisition of competencies there shall be an annual review process. As a part of this, progress for the previous 12 months shall be reviewed and objectives for the next 12 months should be mutually agreed, and set out in writing. This will also include any necessary training which the employee will be expected to undertake in order to fulfil the requirements of their position. The cost of such training shall be borne by the employer.

If the employee has reasonably met the objectives arising out of the annual review process this shall be confirmed in writing by the employer to the employee and the employee shall progress to the next incremental level within the Registered Architect range.

## **7. SUPERANNUATION**

(a) Contribution

As from 14 October 1989, an employer shall make a contribution equivalent to 3% of ordinary time earnings into an approved superannuation fund in respect of all employees who are paid under this award. Such earnings shall exclude overtime and payments made by virtue of Part IV - Allowances, Clause 2 - Fares and Travelling Expenses of this Award.

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) Definitions

**"Approved superannuation fund"** shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

**"The Association"** shall mean The Association of Professional Engineers, Scientists and Managers, Australia.

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(c) Fund

(i) Contributions determined in accordance with subclause (a) of this clause shall, subject to subclause (e) of this clause, be made into either of the following nominated approved funds:

(1) Professional Employees Superannuation Fund

(2) Tasplan; or

(ii) If the Association is concerned about a fund selected pursuant to subclause (e) it may, within six months of the date of operation of this clause or the date of fund selection (whichever is the latter), challenge before the Tasmanian Industrial Commission the suitability of the fund.

(d) Fund Membership

(i) Employers shall make employees aware of their entitlements under this clause and offer them the opportunity to join an appropriate fund in accordance with subclause (c).

(ii) In the event the employee elects not to join the fund, the employer shall remind the employee, in writing, of his/her entitlements, within a period of a further six months. Should an employee subsequently complete the necessary forms and become a member of the fund, the contributions prescribed in subclause (a) hereof shall commence from the pay period commencing after the completion of such forms.

(e) Exemptions

(i) In lieu of the contributions specified in subclause (a) hereof, the benefits offered to employees by an existing approved superannuation fund may be improved, subject to the rules of the fund, such that the overall costs of such benefits is not less than the equivalent of a 3% contribution by the employer. Such improvements shall be in place by the date in subclause (a) hereof and contain the following provisions:

(1) an employer contribution of at least 3%;

(2) no requirement for an associated employee contribution.

Any such improvements made on or from 1 January 1987 may be taken into account.

(ii) Leave is reserved to any employer to apply for exemption from this award on the grounds of the standard of existing superannuation arrangements provided by the employer as at 14 October 1989 or the employer's financial capacity to pay.

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(f) Absence from Work

(i) Paid Leave

Contributions shall continue whilst a member of a fund is absent on paid leave such as annual leave, public holiday, jury service, sick leave and bereavement leave.

(ii) Unpaid Leave

Contributions shall not be required to be made in respect of any absence from work without pay

(iii) In the event of an eligible employee's absence from work due to work related injury or sickness, contributions shall continue for a period of the absence (subject to a maximum of 52 weeks' total absence for each injury or sickness) provided that the employee is receiving payments pursuant to workers compensation legislation.

**8. 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 \$448.40 per week.

(ii) 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)

(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

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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 sick 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 2003 State Wage Case Decision (T10887 of 2003) and all previous safety net and state wage case adjustments.

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## **PART IV - ALLOWANCES**

### **1. EQUIPMENT AND SPECIAL CLOTHING ALLOWANCE**

- (a) Where the employer requires an employee to provide and use a drawing board, paraline or drafting machine, paper, pencils, leads, colours, inks and wearable parts of pen and pencils, the employer must reimburse the employee for the costs of purchasing such equipment. On occasion when required for on-site use, the employer shall pay an allowance equivalent to the cost of necessary protective clothing.
- (b) The provisions of sub-clause (a) shall not apply where the employer supplies such equipment and special clothing without cost to the employee.

### **2. FARES AND TRAVELLING EXPENSES**

- (a) If an employee is directed to work at a place other than his/her usual place of employment, an allowance equivalent to all fares necessarily incurred by him/her each day in excess of the normal fares of travelling from his/her home to his/her usual place of employment and return shall be paid by the employer
- (b) If an employee is directed to work at a place other than his/her usual place of employment the allowance which shall be payable shall be such as to enable him/her to avail of appropriate travel arrangements. In the case of economy air travel an allowance of \$10.40 shall be paid for each meal period occurring during the duration of the travel provided the employee did not receive a meal in flight for each period concerned.
- (c) Except as provided in sub-clause (e) hereof, an employee directed to work at a place away from his/her usual place of work which involved sleeping away from his/her usual place of residence shall be paid an allowance equivalent to all reasonable expenses incurred.
- (d) If an employee be directed by his/her employer to an altered permanent locality of work which necessitates the employee changing his/her place of residence, the employer shall pay an allowance equivalent to all fares as provided in sub-clause (b), travelling and temporary lodging and the transport of the employee's family effects from his/her then place of residence to his/her new place of residence. If the employee is not dismissed for misconduct or does not resign within twelve months of commencing such work, the employer shall pay such fares and travelling expenses for the employee's family and expenses of transporting their effects back to their former place of residence.
- (e) Notwithstanding the above other suitable forms of remuneration may be mutually agreed.

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### **3. VEHICLE ALLOWANCE**

In cases where it is mutually agreed that an employee will be required to use his/her private vehicle on his/her employer's business, an employee shall be paid reasonable compensation, but in no case shall he/she receive payment at a rate less than the equivalent of 48 cents per kilometre so travelled.

**PROVIDED** that this rate shall be adjusted on 1 June each year in accordance with movement in the "Transportation" component (Weighted Average Of Eight Capital Cities) of the Consumer Price Index for the 12 months preceding the March Quarter in the same year.

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## **PART V - HOURS OF WORK AND OVERTIME**

### **1. HOURS OF WORK**

(a) Ordinary Hours

The ordinary hours of duty of an employee shall not exceed the normal hours of duty as are applicable from time to time of the majority of employees in the particular establishment in which he/she is employed: but shall not exceed 38 per week, to be worked between 8.00 am. and 6 p.m. Monday to Friday inclusive.

Provided that the spread of ordinary hours may be altered by mutual agreement between an employer and the majority of employees in the establishment, section or sections concerned.

(b) Travelling time

Where an employee is directed to work at a place other than his/her usual place of employment all time occupied by him/her on any day in travelling which is in excess of the time normally occupied by him/her in travelling when working at his/her usual place of employment, shall be deemed to be working time and shall be paid for at the appropriate rate prescribed by this award. Provided that where the excess travelling time is in excess of one hour each way, the employer shall have the option of providing reasonable living away from expense reimbursement for any period in excess of four weeks.

### **2. OVERTIME**

(a) For all work done outside ordinary hours the rates of pay shall be time and a half.

(b) Time Off in Lieu of Payment

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked (unless otherwise provided elsewhere in the award)
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in sub-clause (a) of this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

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- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book.

(c) Make-Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at later time, during the spread of ordinary hour provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993
- (v) An employer shall record make up time arrangements in the time and wages book.

(d) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time

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- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Day Off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record Rostered Day Off arrangements in the time and wages book.

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## **PART VI - LEAVE AND HOLIDAYS WITH PAY**

### **1. ANNUAL LEAVE**

(a) Entitlement to leave

An employee other than a casual is entitled to at least four weeks annual leave after every twelve months of continuous service.

(b) Pay rates for annual leave

The pay rate for annual leave is the employee's rate of pay at the time the employee takes the annual leave plus 17.5% of the appropriate rate of wage prescribed in the award.

(c) Timing of payment

The employer shall pay each employee before the commencing of leave, his/her ordinary pay for the leave period, inclusive of leave loading and any amounts to which the employee is entitled in his/her contract for that period.

(d) Taking of leave

(i) The employee must be allowed to take annual leave, at a time agreed with the employer, within four months after it is due. The employer and the employee may agree to extend this period to twelve months.

(ii) The employer and the employee should seek to reach agreement on the time for the taking of annual leave and the amount of annual leave to be taken at that time. Where no agreement can be reached, the employer may direct the taking of annual leave with one months notice and the annual leave to be taken in this circumstance must not be of a period of less than two weeks.

(e) Payment instead of leave

An employee must take annual leave and payment shall not be made in lieu of annual leave. However, if the employee leaves or is dismissed, the employer must pay the employee any leave entitlement including a proportional amount for each full month worked since the employee began working or last qualified for leave. Such pro rata annual leave does not include leave loading.

(f) Public holidays falling within annual leave

If a public holiday falls within an employee's annual leave and is on a day which would have been an ordinary working day, then the period of the leave shall be increased by an equivalent day in respect of the holiday.

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- (g) Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences provided that:
- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
  - (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
  - (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
  - (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
  - (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
  - (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

## **2. BEREAVEMENT LEAVE**

An employee shall on the death of a member of the employee's immediate family, or a member of the employee's household be entitled upon application being made to, and approved by, the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

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.

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

- A. spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bone fide domestic basis although not legally married to that person ; and

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- B child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

### **3. CARER'S LEAVE**

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee, is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Part VI - Leave and Holidays With Pay, Clause 6 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement per annum.

Where a part-time employee's hours of work are not constant, the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:

a member of the employee's immediate family, or

a member of the employee's household

The term 'immediate family' includes:

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

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- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
  - (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- (b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

- (c) Grievance Process

Any dispute or claim arising out of the Carer's Leave provisions of the award shall be dealt with Part VII - CONSULTATION AND DISPUTE RESOLUTION, Clause 1 - Disputes and Grievance Procedure.

#### **4. HOLIDAYS WITH PAY**

- (a) An employee excluding casuals shall be entitled, without loss of pay, to public holidays as follows: New Year's Day, Australia Day, Regatta Day (or Recreation Day North of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day - or such other as is generally observed in a locality as a substitute for any of the said days respectively. Provided that if the majority of employees in the particular establishment are entitled to a holiday on any day or days other than the days specified herein, an employee shall be also entitled to a holiday on such day or days.
- (b) All work performed on a public holiday shall be deemed to be work in excess or outside of normal hours of duty and shall be paid or compensated for in accordance with Part V - HOURS OF WORK AND OVERTIME, Clause 2 - Overtime.

#### **5. 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.

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(a) Definitions

For the purposes of this clause:

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

(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

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- (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
    - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
  - (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
  - (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
  - (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
  - (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
  - (vi) Special maternity leave
    - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

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- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick 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 sick 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 sick leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

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

(d) Paternity Leave

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

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

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(f) Parental leave and other entitlements

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

(g) Part-time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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(v) Transitional Arrangements - Sick Leave

An employee working part-time under this subclause 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.

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

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

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

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## **6. SICK LEAVE**

An employee absent from duty on account of personal ill-health or injury due to any cause shall be entitled to payment of sick leave to the same extent and upon the same conditions as are applicable from time to time to the majority of employees employed in the particular establishment in which the employee is employed.

**PROVIDED** that the minimum quantum of sick leave entitlement shall be 10 days per annum, fully cumulative.

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## **PART VII - CONSULTATION AND DISPUTE RESOLUTION**

### **1. DISPUTES AND GRIEVANCE PROCEDURE**

Any employee grievance shall be dealt with in the following manner:

- (a) in the first instance, the employee shall attempt to resolve the grievance with his or her immediate supervisor or the employer;
- (b) where such an attempt at settlement has failed, or where the grievance is of such a nature that direct discussion with the immediate supervisor would be inappropriate, the employee may notify an authorised representative;
- (c) the authorised representative may take the matter up with the employer and a meeting shall be arranged to take place as soon as practical after notification to the employer of the grievance;
- (d) if the matter in dispute is not settled at the preceding stage, it may be referred by either party to the Tasmanian Industrial Commission for settlement.

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## **PART VIII – AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. PROFESSIONAL EMPLOYEES REPRESENTATIVE**

An employee appointed or elected as a representative of members of The Association of Professional Engineers, Scientists and Managers, Australia in the employer's establishment, or in the separate establishments of the employer where there is more than one, shall, upon notification thereof by an official of the Association to the employer, be recognised as the accredited representative of the Association and he or she shall be allowed the necessary time during working hours to interview the employer or representative on matters affecting the employees whom he or she represents.

Subject to the prior approval of the employer, the accredited representative of the Association shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited official of the Association on legitimate Association business.

P C Shelley  
**COMMISSIONER**

16 July 2003