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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

**Wage Rates – State Wage Case July 2004 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002004 – Safety Net Review – Award rates to be increased by \$19 per week – Wage related allowances increased by 3.5% - Meal allowances increased to \$12.70 – Supported Wage increased to \$61 per week – Operative date ffpp 1 August 2004 – State Minimum Wage determined at \$467.40 – s.35(1)(b)**

**DAIRY PROCESSING AWARD**

**ORDER BY CONSENT**

**No. 1 of 2004**

**(Consolidated)**

CLAUSES 1, 5 AND 6 OF PART III, CLAUSE 1 OF PART IV AND CLAUSE 3 OF PART V ARE 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 "Dairy Processing Award".

### **2. INDEX**

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### **3. SCOPE**

This award is established in respect of the industry of processing, retailing or delivering milk or cream.

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

This award shall be operative from the first full pay period to commence on or after 1 August 2004.

### **5. AWARD INTEREST**

(a) The following employee organisations have an interest in this award pursuant to section 63(10) of the *Industrial Relation Act 1984*:

The Australian Workers' Union, Tasmania Branch

The Transport Workers' Union of Australia (Victorian/Tasmanian Branch)

(b) The following employer 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

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- (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.

## **6. SUPERSESSION**

This award incorporates and supersedes the Dairy Processing Award No. 1 of 2003 (Consolidated) and No. 2 of 2003.

## **7. GENERAL DEFINITIONS**

In this award except where otherwise clearly intended:

**'Adult'** means any employee other than an apprentice eighteen years of age or over.

**'Casual employee'** means an employee engaged and paid by the hour.

**'Cyclic Roster'** means where the employer requires an employee to work a roster that requires the employee to regularly work, as part of the roster, on a Saturday, Sunday and or a holiday as prescribed in Part VII – CONSULTATION AND DISPUTE RESOLUTION, Clause 4 - Productivity and Efficiency, of this award.

**'Part-time employee'** means a person employed on a permanent basis of not less than 15 hours per week shall be deemed to be employed on a part-time basis.

Such persons are eligible for wages and leave accruals on a pro rata basis in accordance with the relevant provisions of this award for weekly employees.

**'Temporary employee'** means an employee engaged for a predetermined length of time - not exceeding 12 months and who is subject to all conditions 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 a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

**'Union'** means a registered organisation of employees listed in Part I – APPLICATION AND OPERATION OF THE AWARD, Clause 5 - Award Interest of this award.

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

### **1. EMPLOYMENT CATEGORIES AND TERMS OF ENGAGEMENT**

#### (a) Weekly Employees

- (i) Employment (other than a casual employee) shall be from day to day for a probationary period of three months but thereafter shall be by the week and an employee shall perform such work as the employer shall from time to time require on the days and during the hours usually worked by an employee of his level as determined by the Employee Development Program.
- (ii) It shall be a condition of employment that any employee shall learn any other job or skill as directed and accept responsibility in accordance with the Employee Development Program or provide instruction to another employee as requested.

An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote deskilling.

**PROVIDED** that this provision does not deny such employees any award entitlement which might be applicable for performing work of a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the employee's substantive classification for performing work of a lower classification.

- (iii) Any employee not attending for duty, except as provided in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clauses 1 - Annual Leave, 4 - Bereavement Leave, 3 - Parental Leave, 6 - Public Holidays with Pay or 2 -Sick Leave of this award, shall not be paid for the actual time of such absence.
- (iv) Employment (other than casuals and employees on 3 months probation) shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for misconduct, and in such case all moneys due shall be paid up to the time of dismissal only, or to deduct payment for any day or part of a day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

**PROVIDED** that the employer and employee may agree to forego the notice or payment in lieu prescribed by this subclause.

- (v) Any employee who is absent from his employment without reasonable cause for a period exceeding two consecutive working days shall be deemed to have terminated his employment.

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(b) Casual Employees

Casual employees (as defined) shall be engaged by the hour and shall be paid per hour one thirty-eighth of the appropriate weekly rate plus 20% in lieu of annual leave, sick leave and public holidays.

- (c) (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (ii) This provision does not deny such employees any award entitlement which might be applicable for performing work of a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the employee's substantive classification for performing work of a lower classification.

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## **2. TOOL LIST**

(a) The following tools shall be supplied and maintained by fitters:

Spanners	ring/open end metric 6-19 mm and 24 mm whit to 1" adjustable shifting spanners 12"-8"-6"
Screwdrivers	1 set – Stanley
Hacksaw	(no blades)
Hammers	2 ball pien 1 soft
Chisels	1 large 1 small
Pliers	large insulated long nose multi-grips circlip pliers I.D.- O.D. side cutters
Allen keys – metric - imperial	
Stanley knife	
Feeler gauges – metric	
Pin punches – 1 set	
Centre punches	
Measure tape 3.5m	
Rule 6"-12"	
Scriber	
Tin Snips	

(b) The tool kit may be checked every six months by the supervisor to ensure that the tradesman has maintained a full kit. There will be a three month period of grace from the date of this award during which time the tool kits will be brought up to date with the above lists.

(c) The employer will supply and maintain all other tools which will remain the property of the company and will be made available for use by tradesmen when required.

(d) Replacement of lost tools shall be the responsibility of the employee.

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**PART III - WAGE RATES AND RELATED MATTERS**

**1. WAGE RATES**

(a) Adults

(i) An adult employee in a classification level hereunder mentioned shall be paid the weekly wage rate appearing opposite that classification.

Classification	Base Rate Relativity	Base Rate	Safety Net Adjustment Rate	Weekly Wage
	%	\$	\$	\$
1 Dairy Worker Level 1 (as defined)	80	333.80	142.00	475.80
2 Dairy Worker Level 2 (as defined)	82	342.10	142.00	484.10
3 Dairy Worker Level 3 (as defined)	85	354.60	142.00	496.60
4 Dairy Worker Level 4 (as defined)	89	371.30	142.00	513.30
5 Dairy Worker Level 5 (as defined)	94	392.20	142.00	534.20
6 Dairy Worker Level 6 (as defined)	100	417.20	144.00	561.20
7 Trades Level 1 (as defined)	100	417.20	144.00	561.20
8 Dairy Worker Level 7 (as defined)	105	438.10	144.00	582.10

(ii) Cyclic Roster Payments

Employees engaged on a cyclic roster (as defined) shall receive in addition to the appropriate rate as prescribed in paragraph (a) hereof an amount equal to 7.75% calculated on the weekly wage rate.

(b) Apprentices

The minimum weekly wage rate that may be paid to apprentices shall be the undermentioned percentage of the weekly wage rate payable to Trades Level 1 (as defined):

	%
First Year	55%
Second Year	70%
Third Year	80%
Fourth Year	95%

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(c) Unapprenticed Juniors

The minimum weekly wage rate that may be paid to unapprenticed junior employees shall be the undermentioned percentage of the weekly wage rate for the classification Dairy Worker - Level 2 (as defined):

	%
Under 17 years	60%
17 to 18 years	70%
18 years and over	100%

(d) Transport Workers

(i) Deliverer of Milk and or Cream

The rates of pay and the conditions of employment of employees engaged on the delivery of milk or cream shall be in accordance with those prescribed in the award known as 'The Transport Workers (Milk Carters) Award 2002' made by the Australian Industrial Relations Commission.

(ii) Any disputes arising in respect of the provisions of subdivision (i) hereof, shall be referred to the Tasmanian Industrial Commission whose decision shall be final.

## **2. CLASSIFICATION DESCRIPTORS**

'**Dairy Worker Level 1**' (% Wage Relativity to Dairy Worker Level 6 - 80%) - an employee entering the work-force and/or performing base level labouring duties and who will be provided with induction training and other training in the broad operations of the company.

Duties:

An employee at this level will perform basic labouring and cleaning duties.

Indicative of the tasks identified above would be:

- performs general housekeeping functions;
- performs general labouring and cleaning duties;
- carried or moves products or materials;
- required to move raw material/packaging material;
- exercises minimal judgement;
- displays satisfactory attendance and punctuality;
- works under direct supervision;
- conforms to the company's standards for personal hygiene and general cleanliness;
- conforms to the company's personnel practices;
- is expected to identify problems and bring to notice of the supervisor;
- is expected to practice recommended safe working practices;
- is willing to be trained in order to progress to Level 2.

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Responsibility:

An employee at this level will work under direct supervision and will exercise minimal discretion in carrying out the duties required.

Qualification:

The entry level requirement for employees recruited and/or operating at this level will be established by the employer. As a guide an employee will be required as a minimum to have successfully completed Grade 10, Level II English and Mathematics in order to satisfy the literacy and numeracy requirements of this position.

Training:

Employees at this level will undertake induction training and be provided with a structured program to develop the range of skills required at this level.

The training program will also allow for the development over time of the skills to allow progression to Production Level 2.

**'Dairy Worker Level 2'** (% Wage Relativity to Dairy Worker Level 6 - 82%) - an employee undertaking a broad range of production functions at a level higher than that prescribed for Level 1.

Duties:

An employee undertaking routine production functions which require work methods that are well established and operate to clear procedures and methods.

Indicative of the tasks identified above would be:

- is required to perform all work associated with repack;
- understands and undertakes basic quality control assurance procedures including the ability to recognise basic quality deviations, and reports faults to supervisor;
- is required to exchange information with other employees;
- uses selected hand tools;
- maintains simple records;
- is required to use hand trolley and pallet trucks;
- may be required to collect and prepare samples, equipment and reagents for testing;
- performs general labouring and cleaning duties;
- works under routine supervision either individually or in a team environment;
- is required to perform their work in order to minimise the possibility of accidents to themselves and others;
- is required to be familiar with the layout of the plant and the product flow through the immediate area;
- is required to perform work related to the crate ramp.

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Responsibilities:

An employee at this level will competently undertake any or all of the above duties under routine supervision either individually or within a team.

Qualifications:

An employee working at this level will have the required skills and competence given appropriate training, to perform the duties required to a standard determined by the employer.

Training:

An employee shall undertake a structured program of training to develop the skills required to perform competently any of the duties required at this level.

The training program may also allow for the development over time of the skills to allow an employee to work competently at Level 3.

Progression:

Progression to Level 3 will be on the basis of an employee at Level 2 obtaining the requisite skills and competency standards and on being selected on merit for a position when a position at Level 3 becomes available.

**'Dairy Worker Level 3'** (% Wage Relativity to Dairy Worker Level 6 - 85%) - an employee undertaking a broad range of production functions at a level of complexity greater than that required at Level 2.

Duties:

An employee undertaking production functions which require the exercise of a moderate degree of skill and who largely works to established procedures and methods but who can operate flexibly between skill areas as required by the employer.

Indicative of the tasks identified above would be:

- operates flexibly between work stations;
- operates machinery and equipment requiring the exercise of skills and knowledge beyond that of an employee at Level 2;
- possesses basic keyboard skills;
- is required to measure quantities such as mass, volume, temperature, weight;
- is expected to clean and sanitise the equipment in related areas;
- is expected to work under minimal supervision or unsupervised;
- is required to record appropriate information about their work on a prepared form;
- is required to be aware of the impact of the position on productivity of the section.
- In some positions, the employee may make a major contribution to the overall productivity of the section;
- is required to operate forklift trucks;
- is required to perform work related to the dispatch ramp;

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- is required to assist in laboratory duties;
- is required to have knowledge and exercise skills and accept the responsibilities associated with stock control;
- demonstrate knowledge of product range and use by dates in relation to stock rotation;
- be familiar with all transport movements;
- is expected to identify problems and bring to notice of the supervisor;
- performs repetition work on automatic, slow speed, semi-automatic, or single purpose machines or equipment and be responsible for cleaning same.

Responsibilities:

An employee at this level will competently undertake any or all of the above duties under routine supervision either individually or within a team. A Level 3 employee shall be responsible under routine supervision for ensuring the quality and accuracy of their own work.

Qualifications:

An employee working at this level will have the necessary skill and competence given appropriate training to perform the duties required at this level at a standard determined by the employer. DLI forklift licence.

Training:

An employee at this level shall undertake a structured program of training to develop the skills required to perform competently any of the duties required at this level.

The training program may also allow for the development, over time, of the skills to allow an employee to work competently at Level 4.

Progression:

Progression to Level 4 will be on the basis of an employee at Level 3 attaining the requisite skill and competency standards and on being selected on merit for a position when a position at Level 4 becomes available.

**'Dairy Worker Level 4'** (% Wage Relativity to Dairy Worker Level 6 - 89%) - an employee undertaking a broad range of production functions at an advanced level and may undertake supervision of other production employees under the overall control of a supervisor.

Duties:

An employee undertaking production functions which require the utilisation of advanced non-trade skills with only limited instruction.

Indicative of the tasks identified above would be:

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- carries out routine lubrication of production machinery and equipment as per manufacturer's operating manuals;
- assists in the provision of on-the-job training to employees at Level 1 to 3 inclusive;
- is required to identify problems and within predetermined guidelines, take corrective action without reference to supervisor;
- is required to clean the equipment manually and using the CIP process and be responsible for its cleanliness;
- is familiar with the procedures necessary to ensure that production targets for the work area are met;
- operates and controls more than one piece of equipment. In addition, the employee may be required to dismantle/reassemble the equipment;
- is required to exercise discretion within their level of skill and training;
- is required to aseptically obtain production samples;
- is required to perform specified QC tests on production samples, to assist in the control of the process;
- is required to carry out a limited range of lab test procedures;
- is required to operate advanced carton machines.

#### Responsibilities:

An employee at this level will competently undertake any or all of the above duties under minimal supervision either individually or within a team and may supervise and be responsible for the work of others and may be responsible for the assessment and/or delivering of training within their area of expertise.

#### Qualifications:

An employee at this level will have the required technical and/or supervisory skills and competence required to perform all or any of the duties at this level. He/she will have undertaken relevant equipment suppliers' training courses.

#### Training:

An employee at this level shall undertake a structured program of training to develop the skills required to perform competently any of the duties required at this level.

The training program may also allow for the development, over time, of the skills to allow the employee to work competently at Level 5.

#### Progression:

Progression at Level 5 will be on the basis of an employee at Level 4 attaining the requisite skill and competency standards and on being selected on merit for a position when a position at Level 5 becomes available.

**'Dairy Worker Level 5'** (% Wage Relativity to Dairy Worker Level 6 - 94%) - an employee undertaking a broad range of production functions at a level above that required at Level 4 and may undertake supervision of other production employees with or without the overall direction of a supervisor.

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#### Duties:

An employee undertaking the total range of production functions by the utilisation of advanced non-trade skills with little or no supervision.

Indicative of the tasks identified above would be:

- is responsible for the chemical and bacteriological quality of product;
- is required to be fully conversant with the procedures of the U/F Plant with special emphasis on the cleaning process;
- operates flexibly between work stations within the relevant plant;
- may carry out routine lubrication and basic maintenance of production equipment;
- assist in the provision of on-the-job training to employees at Level 1 to 4 inclusive;
- is expected to work without direct supervision;
- must display the ability to produce reliable and accurate laboratory test results (chemical);
- also to demonstrate skills required for interpreting the results of micro-biological testing;
- is required to possess keyboard skills at a high level;
- is required to operate milk testing equipment;
- is required to keep production records and pasteurising records;
- is required to operate milk pasteurising equipment;
- will be fully conversant with and be able to operate equipment from all areas of the plant without supervision and be multi-skilled;
- will exercise leadership in the plant;
- will carry out on-the-job training to employees below this level;
- will assist in decision making;
- will carry out basic maintenance of production/laboratory equipment;
- is required to handle culture for yoghurt manufacture, and demonstrate skills required to enable yoghurt manufacture.

#### Responsibilities:

An employee at this level will competently undertake all or any of the above duties with little or no supervision either individually or within a team and will supervise and be accountable for the work of other production employees and for the assessment and/or delivery of training of other employees.

#### Qualifications:

An employee at this level will have the required technical and/or supervisory skills and competence to perform the duties of this level and will have good interpersonal and communication skills. Industry certificates where applicable must be obtained.

#### Training:

An employee at this level shall undertake such structured training as deemed appropriate by the employer to perform competently all of the duties required at this level.

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The training program may also allow for the development, over time, of the skills required to allow the employee to progress to Level 6.

It is envisaged that at this level QC and supervisory courses will be attempted.

Progression:

Progression at Level 6 will be on the basis of an employee at Level 5 attaining the requisite skill and competency standards and on being selected on merit for a position when a position at Level 6 becomes available.

**'Dairy Worker Level 6'** (% Wage Relativity - 100%) - an employee undertakes a broad range of production functions at a level above that required for Level 5 and may undertake supervision and training of other production employees with or without the overall direction of a supervisor.

Duties:

An employee undertaking the total range of production functions by the utilisation of advanced non-trade skills without supervision.

Indicative of the tasks identified above would be:

- is required to carry out a wide range of test procedures within the field of laboratory testing (chemicals, micro-biological or milk analysis);
- typical jobs at this level include laboratory technician and other appropriate certified classifications;
- is capable of interpreting chemical and micro-biological test results and advising relevant supervisor of any irregularities;
- take the appropriate action to rectify identified problems without further reference to supervisors.

Responsibilities:

An employee at this level will competently undertake any or all of the above duties without supervision either individually or within a team and may supervise and be responsible for the work of others and may be responsible for the assessment and/or delivering of training within their area of expertise.

Qualifications:

An employee at this level will have gained a Diploma in Dairy Technology or equivalent.

Shall be able to demonstrate excellent interpersonal and communication skills gained from successfully completing an "in house" management course.

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Training:

An employee at this level shall undertake a structured program of training to develop the skills required to perform competently any of the duties required at this level.

The training program may also allow for the development over time, of the skills to allow an employee to work competently at Level 7.

Progression:

Progression to Level 7 will be on the basis of an employee at Level 6 attaining the requisite skills and competency standards and on being selected on merit for a position when a position at Level 7 becomes available.

**'Dairy Worker Level 7'** (% Wage Relativity to Dairy Worker Level 6 - 105%) an employee who has demonstrated skill and total knowledge of the range of production functions carried out on site. He/she will be capable of carrying out the duties, as directed, of the overall Plant Supervisor.

Qualifications:

Diploma in Dairy Technology or equivalent will be the required technical level and demonstrated excellent interpersonal and communication skills.

**'Trades Level 1'** (% Wage Relativity to Dairy Worker Level 6 - 100%) - an employee who has completed a Trade Certificate or who holds a Tradespersons Rights Certificate in a relevant discipline and who exercises the skills and knowledge of those qualifications.

Duties:

An employee undertaking trade and non-trade functions which require the exercise of trade skill and knowledge and/or advanced production skills.

Indicative of the tasks identified above would be:

- perform the full range of trade level duties;
- performs non-trades work incidental to their work;
- perform work which is incidental or peripheral to the primary trade/task as required to complete the total task;
- setup, adjust and operate all production machinery;
- approve first-off samples;
- inspect and approve products/materials for conformity to operational standards;
- development and provision of on-the-job training within the employees area of expertise;
- understands, applies and provides instruction in TQC concepts;
- understands, applies and can instruct others in the Quality Assurance System;
- detects, analyses and remedies quality deficiencies;
- maintains appropriate production/engineering records;
- prepares and instructs on production techniques and procedures.

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Responsibility:

An employee at this level will possess a Trade Certificate or a Tradespersons Right Certificate in an appropriate discipline and the appropriate supervisory, interpersonal and communication skills necessary to perform the range of duties required at this level.

Training:

An employee at this level shall undertake such structured training as deemed appropriate by the employer so as to perform competently all of the duties required at this level.

The training program may also allow for the development, over time, of the skills required to allow for progression to a management position.

### **3. PAYMENT OF WAGES**

- (a) Payment of wages shall be made by bank transfer no later than Wednesdays except where a public holiday falls on a Wednesday.
- (b) The employer may exercise the option to introduce fortnightly payment.
- (c) Payment shall be made by the clock for each day's work, in decimals of one hour, where 0.1 hour will measure 6 minutes, and each completed 3 minutes shall count to the next decimal.

### **4. SUPERANNUATION**

- (a) Contribution
  - (i) The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
  - (ii) An employer shall make an occupational superannuation contribution on behalf of an eligible employee, equivalent to the amount prescribed by the *Superannuation Guarantee Charge Act 1992* of ordinary time earnings (as defined) into the fund known as TASPLAN (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause.
  - (iii) Contributions to the fund shall be made by the employer on behalf of an eligible employee, on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

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(iv) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(ii) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

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

**'Eligible Employee'** shall mean an employee for whom a classification appears in this award whether employed on a full-time or casual basis.

**'Ordinary Time Earnings'** shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as reimbursement of expenses.

**'Tasplan'** shall mean the approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(c) Cessation of Contributions

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

(d) Exemptions

(i) The Tasmanian Industrial Commission may grant an exemption to an employer in accordance with the provisions of the *Industrial Relations Act 1984*.

(ii) In accordance with subclause (a) (ii) hereof, the following approved fund(s) have application:

<b>Fund</b>	<b>Employer</b>
National Dairies Limited Superannuation Fund	National Dairies Tasmania Limited

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## **5. 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 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:

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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.)

(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.

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(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.

(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.

## **6. 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 Clause 5 - Supported Wage System is \$467.40 per week.

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- (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).
- (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 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 2004 State Wage Case Decision (T11548 of 2004) and all previous safety net and state wage case adjustments.

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## **PART IV - ALLOWANCES**

### **1. FIRST AID ATTENDANT ALLOWANCE**

Where an employee is a qualified first-aid attendant and is authorised by the employer to carry out the duties of a first-aid attendant he shall be paid an additional amount of \$7.50 per week

### **2. LAUNDRY ALLOWANCE**

An employee shall be paid a laundry allowance at the rate of \$2.00 per day worked with a maximum payment of \$10.00 per week. Such payment is to meet the cost of laundering work garments supplied by the employer.

### **3. 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 \$8.30 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.

## **PART V - HOURS OF WORK, PENALTY PAYMENTS & OVERTIME**

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

#### (a) Day Workers

The ordinary hours of work shall not exceed 7.6 hours on any one day, nor exceed 38 hours in any one week, and are to be worked between the hours of 6.00am and 6.00pm on any one day, Monday to Sunday inclusive.

#### (b) Cyclic Roster (as defined)

##### (i) Employees Working to a Cyclic Roster (as defined)

The ordinary rostered hours of work for an employee rostered to work on any 5 of 7 days shall be 38 hours per week. The roster cycle shall be worked over a 6 week period.

##### (ii) **PROVIDED** that where the employer and the employees agree, an alternative cycle may be worked.

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**PROVIDED ALWAYS** the ordinary hours worked over such alternative cycle shall not exceed an average of 38 per week. Such agreement shall be in writing and a copy forwarded to the union(s) prior to implementation

- (iii) Employees whose ordinary hours are rostered over any 5 days shall be entitled to 2 days off in each 7 days. Such days off shall not necessarily be consecutive except in the situation where Saturday and Sunday are worked consecutively.
  - (iv) Notwithstanding any other clause, all day workers, the bulk of whose hours of work fall within 6.00am and 6.00pm and are regularly required to work outside this span of hours, shall have such time worked considered as ordinary hours of work, provided that time so worked shall be paid at the appropriate penalty rate.
- (c) Start and Finish Times
- (i) The actual start and finish times shall be nominated by the employer and shall not be changed without giving at least 7 days notice.
  - (ii) Notwithstanding the above where it is necessary to change start and finish times due to emergency circumstances, e.g. breakdowns, sickness or other reasons beyond the employer's control, an employee may be advised of such change of work hours on the previous working day.
- (d) Weekend Rates

Employees who work a 5 day cyclic roster whose ordinary hours of work are performed on a Saturday shall be paid at time and one half for all ordinary hours worked.

## **2. MEAL/CRIB BREAKS**

(a) Ordinary Hours

Employees shall be allowed an unpaid meal break of not less than 30 minutes at a time as directed by the employer which shall not be included in working time. Such meal break shall commence not later than 5 hours after commencement of work. For work done during the designated meal break payment shall be at time and one half for the first 2 hours and double time thereafter until meal break is taken.

In the event of an emergency and the 30 minute meal break is interrupted, a further 30 minute break shall be allowed.

- (b) Employees will clock off when they go to lunch break and clock on again when they return to their work stations.

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### **3. OVERTIME**

- (a) In recognition of the perishable nature of the product, and the need to supply product on a daily basis, an employee may be required to work overtime at the direction of the employer, however legitimate and pressing reasons for declining overtime shall be considered by the company.

Employees required to work outside the ordinary hours of work prescribed in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours of Work shall except on a public holiday be paid as follows:

Day workers, including casual employees

- (i) Time worked in excess of ordinary hours Monday to Friday shall be paid at the rate of time and one half for the first two hours and double time thereafter.
- (ii) Time worked on a Saturday shall be paid at the rate of time and one half for the first two hours and double time thereafter.
- (iii) All time worked on a Sunday shall be paid at the rate of double time.
- (iv) In the case of casual employees the penalty rates for overtime shall absorb the plus 20% loading.

Cyclic roster workers

- (v) Time worked in excess of ordinary hours Monday to Friday shall be paid at the rate of time and one half for the first two hours and double time thereafter.
  - (vi) Time worked in excess of ordinary hours Saturday shall be paid at the rate of double time.
  - (vii) All time worked on a Sunday shall be paid at the rate of double time.
- (b) Wherever practicable an employer shall give an employee notice of the requirement to work overtime on the day prior to such overtime being required.
- (c) Call Outs

Employees who are recalled to the employer's premises to work time outside of their ordinary hours shall work as directed and shall be allowed a minimum of four hours pay at the appropriate rate. Where the actual time worked on each such recall is less than four hours, overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (c) of this clause.

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(d) Rest Periods

When overtime work, including overtime work on a Saturday and Sunday or public holiday is necessary, it shall, whenever practicable, be so arranged that employees have at least eight consecutive hours off duty between the work of successive days.

If on the instruction of the employer such an employee resumes or continues work without having eight consecutive hours off duty the employee will be paid at double time rates until released from duty for such period and will be entitled to be absent for eight consecutive hours of duty without loss of pay for ordinary working time occurring during such absence.

- (e) By agreement between the employer and an employee time off at the penalty equivalent may be allowed in lieu of payment for overtime worked provided that such time off shall be paid at the ordinary rate, and that the time off is taken at a mutually agreed time within a two week period.
- (f) 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 \$12.70.
- (g) An employee rostered to commence work one and one half hours or more prior to the commencement of the span of hours, i.e. 6.00am shall be provided breakfast by the employer. The meal provided for by this subclause may be substituted by the payment of a meal allowance of \$12.70 in lieu thereof.

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

### **1. ANNUAL LEAVE**

- (a) A total of 152 paid hours leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave) as an employee on weekly hiring in any one or more of the occupations to which the award applies.
- (b) In addition to the leave prescribed in subclause (a) of this clause, employees who are cyclic roster workers, that is workers who are rostered to work regularly on Saturdays and/or Sundays and statutory holidays, shall be allowed 38 paid working hours leave. Such additional leave shall accrue on the basis of 4.38 hours for each completed six week cycle whilst on the cyclic roster.
- (c) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Part VI - LEAVE AND HOLIDAYS WITH PAY Clause - 6 Public Holidays with Pay hereof fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

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- (d) Annual leave shall accrue whilst the provisions of this award are being observed. No leave shall accrue in respect of periods of time employees are directly involved in strike action.
- (e) Employees going on annual leave shall be paid wages at the rate prescribed for their classification in subclause (a) of Part III – WAGE RATES AND RELATED MATTERS, Clause 1 - Wage Rates and Classification Descriptors plus a loading of 17 1/2%.
- (f) Time of Taking Leave

Annual leave shall be given and taken at a time mutually arranged between the company and the employee, provided that in the absence of such arrangement the company shall fix the time of taking leave within a period of twelve months from the date of entitlement and after not less than one month's notice to an employee. Annual leave shall not be taken in less than 38 hour portions unless by mutual agreement.

- (g) (i) Proportionate Leave on Termination of Service

Upon the termination of employment an employee shall be paid, in addition to all other amounts due, annual leave entitlements including a proportional amount of the value of annual leave benefits calculated by reference to the length of employment in his current year of employment, according to the standards prescribed in subclause (a) and (b) of this clause.

- (ii) Such proportionate leave payments shall not attract annual leave loading.

## **2. SICK LEAVE**

- (a) An employee on weekly hiring who is absent from work on account of personal illness, or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) All sick leave shall be paid at the ordinary single time rate.
  - (ii) He/she shall not be entitled to be paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
  - (iii) He/she shall not be entitled to paid leave of absence for any period in excess of his/her accumulated sick leave entitlements.
  - (iv) He/she shall provide to the satisfaction of the employer evidence of illness or injury in respect of the day or days for which payment is claimed.

In the event of a dispute regarding satisfactory evidence, the matter shall be dealt with in accordance with Part VII – CONSULTATION AND DISPUTE RESOLUTION Clause - 3 Disputes Procedure of this award.

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- (v) Employees shall notify the employer or arrange notification, promptly and prior to the commencement of his/her ordinary shift, of their illness or injury and of the approximate period of absence from the work-place. Where without reasonable cause, such notification is not given payment for the absence may be withheld.
  - (vi) Such leave shall accrue at the rate of 76 hours per year.
- (b) Unused sick leave shall accumulate from year to year and shall not be paid out on termination of employment.

### **3. 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
  - (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.

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- (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:
    - (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.

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- (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 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.

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(d) Paternity Leave

A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:

- (i) 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
- (ii) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (iii) a statutory declaration stating:
  - (1) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (2) particulars of any period of maternity leave sought or taken by the mother, and
  - (3) 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.

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- (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.

(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.

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(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.

(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.

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(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.

(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

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(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.

(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) 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.

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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.

#### **4. BEREAVEMENT LEAVE**

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

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

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

#### **5. JURY SERVICE LEAVE**

- (a) An employee required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount the employee would have earned in respect of his ordinary hours of work.
- (b) The employee shall give the employer proof of his attendance, the duration of such attendance and the amount received in respect of such attendance.

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## **6. PUBLIC HOLIDAYS WITH PAY**

- (a) The following days shall be observed as public holidays and shall be granted as such to employees not required to work on those days:

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

- (b) The following provisions shall apply to the payment for statutory holidays:
- (i) All hours worked on such a holiday shall be paid for at the rate of double time and one half.
  - (ii) Employees who are entitled to a period of 190 hours annual leave in accordance with the provisions of subclause (b) of Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause - 1 Annual Leave of this award shall be paid at the rate of double time and one quarter for work performed on a public holiday.
  - (iii) All employees who are not required to work on such a holiday shall be paid a day's pay at ordinary base rate.
- (c) Where an employee is absent from work on his or her last working day or part thereof or before his or her first working day after any of the holidays referred to in subclause (a) of this clause without reasonable cause (proof whereof shall lie upon the employee) or without the consent of the employer, they shall not be entitled to payment for the holiday(s) which occur on the day(s) immediately succeeding or preceding such absence.

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

### **1. ENTERPRISE AGREEMENTS**

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

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

## **2. EMPLOYEE DEVELOPMENT AND STRUCTURAL EFFICIENCY**

The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) developing a more highly skilled and flexible work-force;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the utilisation of skills acquired.
- (d) Classification of employees will be based on the concept of broadbanding the traditional discrete job functions into new broad skill bands.
- (e) Progression between skill bands will be by the acquisition of skills and competencies through an employee development program and on being required to undertake higher graded work to the level of an employee's training and competence.

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### **3. DISPUTES PROCEDURE**

- (a) Where any grievance, claim or problem arises, the employee or the employee and his shop steward may discuss the matter directly with the supervisor concerned.

The supervisor will give an answer or a report to the employee concerned within one working day.

- (b) Should the grievance not be settled the matter may be discussed between the shop steward and the site manager.
- (c) Should the grievance remain unresolved the matter may be referred to a State union official for discussion with the site manager.
- (d) Should the dispute continue unresolved the union representative may discuss the matter with the operations manager or his proxy. Failing agreement a meeting at a mutually agreed date, or within 5 ordinary working days, will be convened for the purpose of resolving the dispute.
- (e) Whilst discussions are taking place in accordance with subclauses (a) to (d) above, the accepted custom or practice, i.e. status quo, that existed prior to the grievance or claim will prevail until the dispute is resolved.
- (f) Failing agreement after following the above procedures the dispute may, at the option of either party, be referred to the Tasmanian Industrial Commission for determination in accordance with the *Industrial Relations Act 1984* and whose decision will be final and binding on all parties subject to any statutory appeal rights.

### **4. PRODUCTIVITY AND EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer and the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.

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- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled work-force;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.
- (h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of the resolution of disputes clause.

## **PART VIII - OCCUPATION HEALTH & SAFETY, TOOLS AND AMENITIES**

### **1. WORKING GARMENTS**

If the employer requires as a condition of employment of an employee, that the employee shall wear protective garments and safety footwear the employer shall supply to employees three sets of washable outer garments. The employer shall also supply suitable footwear each year, such items to remain the property of the employer.

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## **PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. RIGHT OF ENTRY**

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

P C Shelley  
**DEPUTY PRESIDENT**

11 August 2004