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TASMANIAN INDUSTRIAL COMMISSION

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)

**Australian Liquor, Hospitality and Miscellaneous Workers Union -
Tasmanian Branch**
(T11412 of 2004)

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER J P McALPINE

Award variation – union name change - application approved

ORDER BY CONSENT -

FIBREGLASS AND PLASTICS AWARD

**No. 1 of 2004
(Consolidated)**

CLAUSES 6, 8 AND 17 ARE VARIED AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Fibreglass and Plastics Award".

2. SCOPE

This award is established in respect of the industry of processing or manufacturing fibreglass and plastic articles other than plastic articles subject to the Leather, Canvas and Sheet Plastic Fabrication Award.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2004.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Fibreglass and Plastics Award No. 2 of 2003 (Consolidated), No 3 of 2003 and No 4 of 2003.

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) the National Union of Workers (Central Branch) and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisations of employers in respect of whom award interest has been determined:
 - (i) Tasmanian Chamber of Commerce and Industry Limited.

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7. DEFINITIONS

Classifications

MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 1 (% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding Adjustment - 78%)

Undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work, equal employment opportunity and quality control/assurance.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

1. Performs routine duties associated with the relevant manufacturing process including labouring and cleaning duties;
2. Exercises minimal judgement;
3. Workers under direct supervision in the following functions:
 - * housekeeping duties;
 - * assisting machine operators;
 - * perform basic test functions;
 - * operate hand operated transport and lifting devices;
 - * uses selected hand tools; or
 - * maintains simple records.
4. Is undertaking structured training so as to enable them to work at the Manufacturing/Production Employee Level 2 level.

Promotional Criteria:

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of this function so as to enable them to progress to the next level.

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**MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 2
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and
Broadbanding Adjustments - 82%)**

An employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at Manufacturing/Production Employee Level 1 level or has completed an Australian Traineeship System traineeship.

1. Works under direct supervision either individually or in a team environment.
2. Understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviation/faults.

Indicative of the tasks which an employee, at this level may perform are the following:

- * Repetition work on automatic, semi-automatic or single purpose machines or equipment;
- * Assembles components using basic written spoken and/or diagrammatic instructions in an assembly environment;
- * ability to measure accurately using gauges and meters;
- * maintains records;
- * operate slitting and/or cutting machine;
- * operate machinery that requires basic set up skills;
- * operate automatic and manual press machines;
- * assistant laminator.

Promotional Criteria:

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of this function so as to enable them to progress to the next level as a position becomes available.

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**MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 3
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and
Broadbanding Adjustments - 87.4%)**

An employee at this level performs work above and beyond the skills of an employee at Manufacturing/Production Employee Level 2 and to the level of their training for this level including appropriate certification.

1. Is responsible for the quality of their own work subject to routine supervision.
2. Works under routine supervision either individually or in a team environment.
3. Exercises discretion within their level of skills and training.

Indicative of the tasks which an employee at this level may perform are the following:

- * operates with flexibility between assembly/process stations;
- * operates machinery and equipment requiring the exercise of skill, knowledge and discretion beyond that of an employee at level Manufacturing/Production Level 2;
- * basic tracing and sketching skills;
- * receiving, despatching, distributing, sorting, checking, packing (other than repetitive packing in a standard container or containers in which such goods are ordinarily sold), documenting and recording of goods, materials and components;
- * basic inventory control in the context of a production process;
- * basic keyboard skills;
- * operation of mobile equipment including forklifts, hand trolley, pallet trucks overhead cranes;
- * ability to measure accurately using gauges and meters;
- * maintains records;
- * operates mixing and milling machines that duties require set up and operating skills.
- * cleaning duties involving fuse removal, use of chemicals, sewing the premises.

Promotional Criteria:

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of this function so as to enable them to progress to the next level as a position becomes available.

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**MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 4
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and
Broadbanding adjustments - 92.4%)**

An employee at this level performs work above and beyond the skills of an employee at Manufacturing/Production Employee Level 3 to the level of their training for this level including appropriate certification.

1. Works from complex instructions and procedures and exercises discretion within the limit of their skills.
2. Assists in the provision of on-the-job training to a limited degree.
3. Co-ordinates work in a team environment or works individually under general supervision.
4. Is responsible for assuring the quality of their own work.

Indicative of the tasks which an employee at this level may perform are the following:

- * uses precision measuring instruments;
- * maintains records;
- * machine setting, die setting, loading and operation;
- * inventory and store control including:
 - licensed operation of all appropriate materials handling equipment;
 - use of tools and equipment within the scope (basic non-trades) maintenance;
 - computer operation at a level higher than that of an employee at Manufacturing/Production Employee Level 3 level;
- * intermediate keyboard skills;
- * basic engineering and fault finding skills;
- * performs basic quality checks on the work of others;
- * licensed and certified for forklift and crane driving operations to a level higher than Manufacturing/Production Employee Level 3 level;
- * has a knowledge of the employers' operation as it relates to production process;
- * may perform quality control; inspections;
- * operators of calendar, multi-headed extruders, mixing and milling machines that duties require significant set up and operating skills.

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Promotional Criteria:

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the tasks required of this function so as to enable them to progress to the next level as a position becomes available.

**MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 5
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 97%)**

An employee at this level performs work above and beyond the skills of an employee at Manufacturing/Production Employee Level 4 level and to their training for this level including appropriate certification.

1. Able to work from complex instructions and procedures.
2. Able to co-ordinate work in a team environment under general supervision.
3. Assists in the provision of on-the-job training.
4. Responsible for checking quality of their own work.
5. Exercise discretion within the scope of this grade.
6. Exercise keyboard skills a level higher than Manufacturing/Productions Employee Level 4.
7. Performs work under general supervision either individually or in a team environment.

Indicative of the tasks which an employee at this level may perform are as follows:

- * approved and passes first off sample and maintains quality of product;
- * works from production drawings, prints or plants;
- * uses precision measuring instruments;
- * complex machine and die setting, loading, testing and operation;
- * operate all lifting equipment;
- * operates, sets up and adjusts all production machinery in a plant including production process welding to the extent of training;
- * inventory of store control including:
 - licensed operation of all appropriate materials handling equipment;

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- use of tools and equipment within the scope (basic non-trades) maintenance;
- computer operation at a level higher than that of an employee at Manufacturing/Production Employee Level 4 level;
- * intermediate keyboard skills;
- * basic engineering and fault finding skills;
- * licensed and certified for forklift and crane driving operations to a level higher than Manufacturing/Production Employee Level 4 level;
- * has a knowledge of the employer's operation as it relates to production process;
- * supervise, perform and implement quality control functions;
- * supervise and perform operations on calendar, mixing and milling machines;
- * maintains records.

Promotional Criteria:

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification the task required of this functions so as to enable them to progress to the next level as a position becomes available.

**MANUFACTURING/PRODUCTION EMPLOYEE LEVEL 6
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 100%)**

An employee at this level performs work above and beyond the skills of an employee at Manufacturing/Production Employee Level 5 level and to the level of their training, applies the skills acquired through the successful completion of a certificate level or equivalent qualification in the production, distribution, or stores functions accordingly to the needs of the enterprise.

1. Understands and applies quality control techniques.
2. Exercise good interpersonal communications skills.
3. Exercise discretion within the scope of this grade.
4. Exercise keyboard skills at a level higher than Manufacturing/Production Employee Level 5.
5. Performs work under general supervision either individually or in a team environment.

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Indicative of the tasks which an employee at this level may perform are as follows:

- * approves and passes first off samples and maintains quality of product;
- * works from production drawings, prints or plans;
- * operates, sets up and adjusts all production machinery in a plant including production process welding to the extent of training;
- * can perform a range of engineering maintenance functions;
- * manufacturing operations at a level higher than Manufacturing/Production Employee Level 5;
- * operate all lifting equipment;
- * maintains records;
- * basic production scheduling and materials handling within the scope of the production process or directly related functions within raw materials/finished goods locations;
- * understands and applies computer techniques as they relate to production process operations;
- * high level stores and inventory responsibility beyond the requirements of an employee at Manufacturing/Production Employee Level 5;
- * assists in the provision of on the job training in conjunction with trades persons and trainers;
- * has a sound knowledge of the employers operations as it relates to the production process.

TRADESPERSON LEVEL 1

(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 100%)

A Tradesperson Level 1 is an employee who holds a Trade Certificate or Tradesperson Rights Certificate and is able to exercise the skills and knowledge of that trade.

A Tradesperson Level 1 employee works above and beyond an employee at Manufacturing/Production Employee Level 5 and to the level of their training.

1. Understands and applies quality control techniques.
2. Exercises good interpersonal and communication skills.
3. Exercises keyboard skill at a level higher than Manufacturing/Production Employee Level 5.

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4. Exercises discretion within the scope of this grade.
5. Performs work under limited supervision either individually or in a team environment.
6. Operate all lifting equipment incidental to their work.
7. Perform non-trade tasks incidental to their work.
8. Performs work which, while primarily involving the skills of the employees own trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.

**TRADESPERSON LEVEL 2
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 105%)**

An Engineering Tradesperson Level 2 is an employee who has completed the following training requirement:

- (i) 33 per cent of the modules towards an appropriate Post Trade Certificate;
- (ii) or x percentage of modules towards an Advanced Certificate;
- (iii) or y percentage of modules towards an Associate Diploma.

An Engineering Tradesperson Level 2 works above and beyond a Tradesperson at Tradesperson Level 1 and to the level of their training:

1. Exercise the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards prescribed.
2. Exercises discretion within the scope of the grade.
3. Works under general supervision either individually or in a team environment.
4. Understands and implements quality control techniques.
5. Provide trade guidance and assistance as part of a work team.
6. Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Engineering Tradesperson Level 1.
7. Tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform such tasks.

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TRADESPERSON LEVEL 3

(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 110%)

Tradesperson Level 3 is an employee who has completed the following training requirements:

- (i) 66 per cent of the modules towards an appropriate Post Trade Certificate;
- (ii) or x percentage of modules towards an Advanced Certificate;
- (iii) or y percentage of modules towards an Associate Diploma.

An employee at this level works above and beyond an employee at Tradesperson Level 2 level and to the level of their training:

1. Is able to exercise the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards prescribed.
2. Provides trade guidance and assistance as part of a work team.
3. Assists in the provision of training in conjunction with supervisors and trainers.
4. Understands and implements quality control techniques.
5. Work under limited supervision either individually or in a team environment.

The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular indicative tasks:

- * exercises high precision trade skills using various materials and/or specialised techniques;
- * performs operations on a CAD/CAM terminal in the performance of routine modifications to NC/CNC programmes;
- * Install, repair, and maintain, test, modifies, commissions and/or faults finds on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and in the course of such work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems;
- * works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising interconnected circuits.

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**TRADESPERSON SPECIAL CLASS LEVEL
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 115%)**

A Tradesperson Special Class Level means an employee who has completed the following training requirements:

- (i) an appropriate Post Trade Certificate;
- (ii) or x percentage of modules of an Advanced Certificate;
- (iii) or y percentage of modules towards an Associate Diploma.

A Tradesperson Special Class works above and beyond a Tradesperson Level 3 and to the level of their training:

1. Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards prescribed.
2. Is able to provide trade guidance and assistance as part of a work team.
3. Provides training in conjunction with supervisors and trainers.
4. Understands and implements quality control techniques.
5. Works under limited supervision either individually or in a team environment.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform the particular indicative task:

- * working on machines or equipment which utilise complex mechanical or hydraulic and/or pneumatic circuitry and controls or a combination thereof;
- * working on machines or equipment which utilise complex electrical/electronic circuitry and controls or a combination thereof;
- * works on instruments which make up a complex control system which utilises some combination of electrical/electronic, mechanical or fluid power principles;
- * applies advanced computer numerical control techniques in machining or cutting or welding or fabrication;
- * exercises intermediate CAD/CAM skills in the performance of routine modifications to programmes;
- * working in complex or intricate interconnected electrical circuits.

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**ADVANCED TRADESPERSON LEVEL 1
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustments - 125%)**

An Advanced Tradesperson Level 1 means an employee who has completed:

- * x modules of an Advanced Certificate;
- * or seven modules of an Associate Diploma;
- * or equivalent accredited training.

An Advanced Tradesperson Level 1 works above and beyond a Tradesperson Special Class Level and the level of their training:

1. Undertakes quality control and work organisation at a level higher than for Tradesman - Special Class Level.
2. Provides trade guidance and assistance as part of a work team for grades below.
3. Assists in the provision of training to employees in conjunction with supervisors/trainers.
4. Performs maintenance planning and predictive maintenance work not in technical fields.
5. Works under limited supervision either individually or in a team environment.
6. Prepares reports of a technical nature on specific tasks or assignments as directed.
7. Exercises broad discretion within the scope of this level.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform the particular indicative task:

- * working on combination of machines or equipment which utilise complex electrical or electronic or mechanical or fluid power principles;
- * working on instruments which make up a complex control system which utilise some combination of electrical or electronic or mechanical or fluid power principles;
- * applies computer integrated manufacturing techniques involving a higher level of computer operating and programming skills than for lower grades;
- * working on various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control system using integrated circuitry.

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**ADVANCED TRADESPERSON LEVEL 2
(% Wage relativity to Tradesperson Level 1 after Minimum Rate and Broadbanding adjustment - 130%)**

An Advanced Tradesperson Level 2 means an employee who has completed:

- (i) y modules of an Associate Diploma; or
- (ii) equivalent level of accredited training; and
- (iii) provides technical guidance within the scope of this level.

An Advanced Tradesperson Level 2 works above and beyond a Tradesperson at Advanced Tradesperson Level 1 level and to the level of their training:

1. Provides technical guidance within the scope of this level.
2. Prepares reports of a technical nature on specific tasks assignment as directed and within the scope of discretion at this level.
3. Has an overall understanding of the operating principle of the system and equipment on which the tradesperson is required to carry out their tasks.
4. Assists in the provision of on-the-job training in conjunction with supervisors and trainers.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform the particular indicative task:

- * through a system approach able to exercise high level diagnostic skills on complex forms of machinery, equipment and instrument which utilise some combination of electrical, electronic, mechanical or fluid power principles;
- * set up, commission maintain and operate sophisticated maintenance, production and test equipment and/or systems involving the application of computer operating skills at a higher level than Advanced Tradesperson Level 1.
- * works on various forms of machinery and equipment electronically controlled by complex digital and/or analogue control systems using integrated circuitry.
- * working on complex electronics or instruments or communications equipment or control system which utilise electronic principles and electronic circuitry containing complex analogue and/or digital control system using integrated circuitry.

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General

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

8. WAGE RATES

1. WAGE RATES

Adult employees shall be paid in accordance with the following classification structure which shall be read in conjunction with the classification definitions contained in Clause 7 - Definitions:

Classification	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Manufacturing/Production Employee Level 1	78	325.50	142.00	467.50
Manufacturing/Production Employee Level 2	82	342.10	142.00	484.10
Manufacturing/Production Employee Level 3	87.4	364.60	142.00	506.60
Manufacturing/Production Employee Level 4	92.4	385.50	142.00	527.50
Manufacturing/Production Employee Level 5	97	404.70	142.00	546.70
Manufacturing/Production Employee Level 6	100	417.20	144.00	561.20
Tradesperson Level 1	100	417.20	144.00	561.20
Tradesperson Level 2	105	438.10	144.00	582.10
Tradesperson Level 3	110	458.90	144.00	602.90
Tradesperson Special Class	115	479.80	142.00	621.80

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Advanced Tradesperson Level 1	125	521.50	142.00	663.50
Advanced Tradesperson Level 2	130	542.40	142.00	684.40

2. CLASSIFICATION STRUCTURE - TRANSLATION SCHEDULE

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

<u>Pre-existing Classification</u>	<u>New Classification</u>
Tradesman	Tradesperson Level 1
Laminator	Manufacturing/Production Employee Level 3
Mixer	Manufacturing/Production Employee Level 3
Mixer's Assistant	Manufacturing/Production Employee Level 2
Labourer	Manufacturing/Production Employee Level 1
Heavy Machine Operator	Manufacturing/Production Employee Level 3
Light Machine Operator	Manufacturing/Production Employee Level 2
Fitter	Tradesperson Level 1
Cleaner	Manufacturing/Production Employee Level 3

PROVIDED that employees who, prior to the first full pay period commencing on or after 18 July 1991, are in receipt of wage rates in excess of those herein prescribed shall not have their wage rate reduced as a result of the making of this new award and the translation process.

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

3. APPRENTICES

The minimum weekly wage rate to be paid by employers to apprentices shall be the undermentioned percentages of the Tradesperson Level 1 rate of wages appearing in subclause 1 - Wage Rates.

	Percentage of Tradesperson Level 1 Rate %
First year	38
Second year	55
Third year	72
Fourth year	88

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4. JUNIORS

The minimum weekly wage rate to be paid by employers to junior workers shall be the undermentioned percentages of the weekly wage rate appearing in subclause 1 - Wage Rates of this clause for the classification Manufacturing/Production Employee Level 2.

	Percentage of Manufacturing/Production Employee Level 2 Rate %
Under 17 years of age	65
17 Years of age to 18 years of age	75
18 years of age to 19 years of age	85
19 years of age to 20 years of age	100

5. LEADING HANDS

- | | | |
|-----|------------------------------------|------------------------|
| (a) | In charge of 1 to 3 employees | \$12.40 per week extra |
| (b) | In charge of 4 to 6 employees | \$15.90 per week extra |
| (c) | In charge of 7 to 9 employees | \$19.00 per week extra |
| (d) | In charge of more than 9 employees | \$22.30 per week extra |

6. 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 Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

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(b) For the purposes of this subclause:

'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.

'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.

'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.

'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

(c) Supported Wage Rates

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

Assessed Capacity (paragraph (d))	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

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

(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:

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- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
 - (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.
- (e) Lodgment of Assessment Instrument
- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
 - (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.
- (f) Review of Assessment
- The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.
- (g) Other Terms and Conditions of Employment
- Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.
- (h) Workplace Adjustment
- An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.
- (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 four weeks) may be needed.

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- (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.

7. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by subclause 6 - Supported Wage System is \$467.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in paragraph (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 paragraph (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 paragraph (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 paragraph (b)(i).

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(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during 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.

9. ALLOWANCES

(a) 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 \$10.30 per week.

PROVIDED that such an 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.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave) in any one of the occupations to which this award applies.

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(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any holidays prescribed by Clause 14 - Holidays with Pay of this award, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

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

(c) Calculation of Continuous Service

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

- (i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) any absence from work on account of personal sickness or accident and in calculating the period of 12 months continuous service absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be paid of the period of continuous service; or
- (iii) any absence with reasonable cause, proof whereof shall be upon the employer, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months continuous service.

(d) Proportionate Leave on Termination of Service

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

12½ hours for each completed month of continuous service.

(e) Leave to be Given and Taken

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided for in subclause (d) of this clause payment shall not be made or accepted in lieu of annual leave.

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(f) Broken Leave

Leave allowed under the provision of subclause (a) of this clause shall be given and taken in one consecutive period, however, if the employer and the employee agree, annual leave may be broken into shorter periods, provided one period is of at least 14 consecutive days, i.e. 10 working days.

The remaining period of leave may be taken in one of the following methods:

(i) as single days, provided that no more than four single working days are taken in any leave year,

or

(ii) where an employee initiates a request in writing to the employer, any combination of the remaining leave entitlement may be taken.

(g) Calculation of Service

Where the employer is a successor or assignee or transmittee of business if the employee was in the employment of the employer's predecessor at the time when he became such successor or assignee or transmittee the employee in respect of the period during which he was in the service of the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

(h) Payment for Period of Leave

(i) Each employee before going on leave shall be paid the amount of wage he/she would have received in respect of the ordinary time which he/she would have worked had he/she not been on leave during the relevant period or periods plus a loading equal to 17½ per cent of the amount paid in respect of annual leave.

(ii) The provisions of this subclause shall not apply to proportionate leave on termination of service.

(i) 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.

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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 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, pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

11. 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 Clause 26 - 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.

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:
 - (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

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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
 - (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.

12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, step-mother, step-father, grandfather, grandmother, be entitled upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three 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.

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13. CONTRACT OF EMPLOYMENT

- (a) Except as hereinafter provided, employment shall be by the week.

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

- (b) Employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for malingering, inefficiency, neglect of duty or misconduct, and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully employed because of any strike, or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot be reasonably held responsible.
- (c) Any employee not attending for duty shall, except as provided by Clause 26 - Sick Leave of this award, lose his pay for the actual time of such non-attendance.

- (d) Casual Employees

An employee may be engaged on a casual basis provided:

- (i) the engagement is to fill a temporary vacancy occasioned by the absence of another employee; or
- (ii) the engagement does not exceed one month's duration;
- (iii) a casual employee for ordinary time shall be paid an hourly rate of one thirty-eighth of the weekly rate expressed in Clause 8 - Wage Rates plus a loading of 20 per cent.

Such loading shall be in lieu of annual leave, sick leave and public holiday payments.

- (e) Part-time Employees

- (i) The employer may engage part-time employees to regularly work for less hours per day or per week than a full-time employee. A part-time employee shall be paid per hour one thirty-eighth of the appropriate rate in Clause 8 - Wage Rates.

A part-time employee shall be entitled to annual leave, sick leave and public holidays and all other award provisions in the same proportion as their hours bear to thirty-eight.

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- (ii) A part-time employee shall work in accordance with a pre-established roster and shall be paid at overtime rates for work outside of such rostered hours.

Provided that the roster may be altered by mutual agreement without notice or by the employer giving not less than seven clear days notice.

- (iii) Should full-time employment within the classification of work being performed by a part-time employee become available the part-time employee shall be offered the opportunity to apply for such full-time position.
 - (iv) No full-time employee will be reduced to part-time status without their express consent.
 - (v) No more than 10 per cent of the employees in any one establishment shall be engaged on a part-time basis provided that any establishment will be permitted to employ at least one part-time employee.
- (f) An employer may direct an employee to carry out such duties as are within the limit of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

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.

- (g) An employer may direct an employee to carry out such duties and use tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- (h) Any direction issued by an employer pursuant to subclauses (f) and (g) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

14. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid:

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

- (b) Payment for the holidays mentioned in subclause (a) above, which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holidays, he had been at work.

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- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) above, shall be at the rate of double time and one half for all time worked on that holiday.

15. HOURS

- (a) The ordinary hours of work from 29 October 1984 subject to the exceptions herein provided, shall be an average of 38 hours per week, to be worked on one of the following bases:

- (i) 38 hours within a work cycle not exceeding seven consecutive days; or
- (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (iv) 152 hours within a period not exceeding 28 consecutive days.

The method of working may be one of the following:

- (v) by employees working less than eight ordinary hours each day; or
- (vi) by employees working less than eight ordinary hours on one or more days each week; or
- (vii) by fixing one week day on which all employees will be off during a particular work cycle; or
- (viii) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.

The ordinary hours of work prescribed herein may be worked on any day or all of the days of the week, Monday to Friday.

- (ix) Where the 38 hour week is organised in accordance with paragraphs (a)(vii) or (a)(viii) the employer may require the employee to accumulate the rostered days off up to a maximum accumulation of five days.
- (b) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks, at the discretion of the employers between 7.30am and 5.30pm, provided that the spread of hours may be altered by mutual agreement between the employer and the majority of employees in the plant or section or sections concerned.

Provided further that, work done prior to the spread of hours fixed in accordance with this subclause for which overtime rates are payable, shall be deemed for the purposes of this subclause to be part of the ordinary hours of work.

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- (c) The conditions upon which the 38 hour week is operated is that an objective review of current practices can be conducted to establish where improvements can be made and implemented.
- (d) Where an agreement cannot be reached in-plant and where problems arise after agreement or understandings have been achieved, a formal monitoring procedure will apply. The procedures to be applied with respect to special, anomalous or extraordinary problems, where unable to be resolved by the parties, will be referred in the final analysis to the Tasmanian Industrial Commission, or its legal successor, before any industrial action is taken on the matter.
- (e) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned. In the absence of agreement at plant level the procedure for resolving special anomalous or extraordinary problems shall be applied in accordance with subclause (d) of this clause and shall be applied without delay.
- (f) The employer and the majority of employees in the plant or section concerned, may agree that the ordinary working hours are to exceed eight on any day, thus enabling a week day to be taken off more frequently than would otherwise apply. (Not to exceed ten hours in any day).
- (g) Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.
- (h) Except as provided in subclause (i) of this clause, in cases where by virtue of the arrangement of his ordinary working hours, an employee in accordance with paragraphs (a)(vii) and (a)(viii) of this clause, is entitled to a day off during his work cycle, such employee shall be advised by the employer at least four weeks in advance of the week day he is to take off.
- (i) Substitute Days
 - (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (a)(vii) and (a)(viii) of this clause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in emergency situations.
 - (ii) An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.
- (j) The ordinary hours of work prescribed herein, shall not exceed 10 hours in any day, provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the plant or section or sections concerned and the union or relevant branch thereof.

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- (k) After the first three weeks of employment, the ordinary starting or finishing time of an employee shall not be changed during the currency of the working week unless overtime is paid, provided however that the starting or finishing times may be changed without payment of overtime in the case of sickness or accident or breakdown of plant or equipment.
- (l) The starting and finishing times fixed by this clause shall be strictly observed by employees. The start and finish times expressed shall mean the times at which an employee is at the designated work station ready for work. An employee shall lose pay for late start or early finish.
- (m) 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 a later time, during the spread of ordinary hours 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 these make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (n) 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 RDO flexibility, in accordance with this clause, its terms must be set on in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these RDO arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

16. HOURS OF WORK - TWELVE HOUR SHIFT WORK

Subject to the provisions of Clause 15 - Hours and Clause 24 - Shift Work of this award, a shift worker engaged on continuous shifts shall work at such times as an employer may require. A shift may consist of not more than 12 hours inclusive of crib time.

PROVIDED that:

- (a) In any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift, the arrangement of hours shall be subject to the agreement of the employer, the majority of employees and the union.
- (b) Enterprises with operations currently providing for twelve hour shifts shall not vary the existing manner in which work is performed and paid unless agreed between the employer, employees and the union.
- (c) The introduction of twelve hour shifts for all employees employed at work sites not subject to subclause (b) of this clause shall be done consistent with Clause 27 - Structural Efficiency, subclause (c) - Enterprise Flexibility, of this award.
- (d) Except at the regular changeover of shifts, an employee shall not be required to work more than one shift in each 24 hours.
- (e) Twenty minutes shall be allowed to shift workers each shift for crib which shall be counted as time worked.

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- (f) Twelve hour shifts shall be subject to:
- the employer and the employees being guided by occupational health and safety provisions and the ACTU code of conduct on 12 hour shifts;
 - proper health and monitoring procedures being introduced;
 - suitable rosters being made available.
- (g) Consistent with Clause 27 - Structural Efficiency, subclause (c) - Enterprise Flexibility, any employer seeking to vary a pre-existing method of working hours by the introduction of 12 hour shifts shall provide the employees concerned with information regarding the resultant impact the proposed rostering arrangement will have upon the employees remuneration level.

17. MEAL INTERVAL AND MEAL ALLOWANCE

- (a) No employee shall be required to work more than five hours without an interval for a meal break for a minimum period of half an hour to a maximum period of one hour.
- (b) Any employee required to work overtime for more than one and a half hours immediately following his ordinary working hours, without being notified the previous day by the employer that he will be so required to work, shall be supplied with an adequate meal by the employer or be paid a meal allowance of \$12.70.
- (c) Any dispute as to what constitutes an adequate meal shall be referred to the Tasmanian Industrial Commission for determination.
- (d) The payment prescribed in subclause (b) of this clause shall be made on the day on which the overtime is worked.

18. MIXED FUNCTIONS

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

PROVIDED that where it is the practice of the employer to rotate employees between various jobs the two hour limitation shall be increased to four hours.

19. OVERTIME

- (a) For all work performed in excess of the hours prescribed in Clause 15 - Hours subclause (a) of this award or before or after the usual time of starting or finishing of work shall be paid at the rate of time and one half for the first three hours and double time thereafter.

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(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 this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (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 these time off in lieu arrangements in the time and wages book, pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(c) Requirement to Work Reasonable Overtime

- (i) Subject to paragraph (ii) of this subclause and subclause (b) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;

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- (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (5) any other relevant matter.

20. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(c) Eligibility for Maternity Leave

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

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- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

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

(e) Notice Requirements

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

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

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

(i) Special Maternity Leave and Sick Leave

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

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

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

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(m) Return to Work after Maternity Leave

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

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

(n) Replacement Employees

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

PART B - PATERNITY LEAVE

(a) Nature of leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

(c) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by subclause (d) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

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- (1) he will take that period of paternity leave to become the primary care-giver of the child;
- (2) particulars of any period of maternity leave sought or taken by his spouse; and
- (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

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

(f) Variation of Period of Paternity Leave

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

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(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

(ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

(ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave.

(i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

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(l) Replacement Employees

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

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

'Spouse' includes a de facto spouse.

(c) Eligibility

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

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

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

(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and

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(3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave.

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

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- (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

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- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

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

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

- (i) any period of leave taken in accordance with this clause;

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

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

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

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

'Spouse' includes a de facto spouse.

(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

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(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

(i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

(ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

(i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:

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- (1) that the employee may work part-time;
 - (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (3) upon the classification applying to the work to be performed; and
 - (4) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
 - (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
 - (iv) The terms of this agreement shall apply to the part-time employment.
- (i) Termination of Employment
 - (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
 - (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.
 - (j) Extension of Hours of Work

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

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

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(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

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

21. PAYMENT OF WAGES

The wages prescribed by this award shall be paid not later than Thursday of each week. By agreement between the employer and the majority of employees wages may be paid other than in cash.

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

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PROVIDED that this payment shall only be made where payment by direct transfer is introduced subsequent to 1 December 1990.

PROVIDED FURTHER that by mutual agreement between the employer and majority of employees wages prescribed by this award may be paid fortnightly on the basis of one week's wages in arrears and one week's wages in advance.

22. RIGHT OF ENTRY

Right of entry shall be in accordance with Section 77 of the *Industrial Relations Act 1984*.

23. SATURDAY WORK

Employees required to work on a Saturday shall be paid at the rate of time and a half for the first three hours and double time thereafter.

24. SHIFT WORK

(a) Definitions

For the purposes of this clause the following definitions apply:

- (i) **'Afternoon shift'** shall mean a shift finishing at or before midnight.
- (ii) **'Night shift'** shall mean a shift commencing at 10.00pm or later.

(b) Shift Allowance

An employee engaged to work shift work shall be entitled to receive the following allowances:

- (i) Afternoon shift - 15 per cent;
- (ii) Permanent night shift (i.e. a shift which does not rotate or alternate with either day and/or afternoon shift) - 30 per cent;
- (iii) Rotating night shift - 15 per cent.

The above allowances shall be in addition to the wage rates prescribed in Clause 8 - Wage Rates and shall not be subject to premium or penalty addition. Neither shall they be payable at any time at which an employee is entitled to be paid penalty rates for overtime, weekend work, holiday work or any other purpose.

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25. SHOP STEWARDS

An employee appointed shop steward in the factory or premises in which he/she is employed, upon notification thereof to his/her employer, be recognised as the accredited representative of the union to which he/she belongs, and he/she shall be allowed the necessary time during working hours to interview the employer or his/her representative on matters affecting employees whom he/she represents; provided that if the shop steward so requests it he/she may be accompanied at such interview by another employee.

26. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he/she shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
 - (ii) he/she shall, where practicable before the normal start time inform the employer of his/her inability to attend for work and as far as may be practicable state the nature of the illness and the estimated duration of absence;
 - (iii) he/she shall prove to the satisfaction of the employer or in the event of a dispute, the Secretary for Labour, that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he/she shall not be entitled in any year to sick leave credit in excess of 76 hours of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer;
 - (v) For the purpose of administering paragraph (iv) above, an employer may within two weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in paragraph (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.

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- (c) An employer shall not be required to make any payments in respect of accumulated sick leave credits to an employee who is discharged or leaves his/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

27. STRUCTURAL EFFICIENCY

(a) Award Modernisation

- (i) The unions are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and will assist positively in the restructuring process.
- (ii) The unions are prepared to discuss all matters raised by employers for increased flexibility. This process is regulated at the enterprise level in accordance with subclause (c) - Enterprise Flexibility, hereof. The unions will be readily available to discuss award changes at the enterprise level.
- (iii) The parties will co-operate to review the award to remove obsolete reference, remove ambiguities and discriminatory provisions and such other matters that may be identified that will enhance the process of modernising the terms of the award.
- (iv) The parties will co-operate positively to eliminate demarcation and optimising the multi-skilling and cross-skilling of employees at each enterprise and at the industry level.

(b) Workplace Consultation

- (i) The development of effective participative/consultative practices is important in the process of award restructuring and can lead to advantage for both employers and employees. It is therefore recommended that participative consultative mechanism be implemented at the enterprise level where agreement exists between employer and employees.
- (ii) The process of consultative practices is a mechanism through which employees can be involved in and positively contribute towards the management decision making process. Decisions are encouraged to be reached through consultative mechanism, however, managerial prerogative is acknowledged.
- (iii) The process of consultative practices may be used to implement the provisions of subclause (c) - Enterprise Flexibility.
- (iv) Where Enterprise Consultative Committees have agreed to be established, as far as is practicable employers and employees shall be at least equally represented on the Committee.

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(c) Enterprise Flexibility

- (i) 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.
- (ii) An agreement shall be subject to the following requirements:
 - (1) The majority of employees affected by the change must genuinely agree to the change.
 - (2) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (3) The relevant union or unions shall be advised by the employer of his or her intention to commence discussions with employees of an agreement under this clause.
 - (4) The relevant union or unions must be a party to the agreement.
 - (5) The relevant union or unions shall not unreasonably oppose any agreement.
- (iii) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:
 - (1) The term of the agreement.
 - (2) The parties covered by the agreement.
 - (3) The classes of employees covered by the agreement.
 - (4) The means by which a party may retire from the agreement.
 - (5) The means by which the agreement may be varied.
 - (6) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (iv) Any agreement which seeks to vary a provision of the award shall be referred to the Tasmanian Industrial Commission.

(d) Proposed Classification Structure

The parties to this award agree to test a proposal for a new wage and classification structure which was Exhibit NUW2 in the matter T. No. 2688 of 1990 tendered on 4 December, 1990.

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In testing the proposal, the parties:

- (i) accept in principle that the descriptions of job functions within the new classification structure are more broadly skill based and generic in nature;
- (ii) accept that employees in the groups therein described are to perform a wider range of duties, including work which is incidental or peripheral to their main tasks or functions;
- (iii) affirm that subject to agreement at enterprise level employees are to undertake training for wider range of duties and access to higher classifications;
- (iv) will not create barriers to advancement of employees within the award structure or through access to training where it is consistent with the needs of the enterprise;
- (v) will co-operate in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputations;
- (vi) agree to finalise the testing of the new wage and classification structure for insertion in the award no later than or earlier if agreed between the parties and approved by the Commission.

28. SUNDAY WORK

Employees required to work on Sundays shall be paid at the rate of double time.

29. SUPERANNUATION

(a) Contribution

- (i) The employer shall make an occupational superannuation contribution equivalent to nine per cent of ordinary time earnings into the funds known as TASPLAN or LUCRF or any other approved fund where an exemption has been granted under subclause (d) of this clause in respect to all eligible employees as from 16 September 1991 provided that in the case of all eligible casual and part-time employees contributions shall not only be made where the employee works at least 38 hours during a fund billing statement month. 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.

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- (ii) 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 contribution defined in paragraph (a)(i) of this clause paid into the fund known as CIS 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 Occupation Superannuation Funds.

'Eligible employee' shall mean an employee whether weekly, part-time or casual, who has had at least three months continuous service with an employer subject to this award.

PROVIDED that in the case of an employee who has so qualified with one employer, that employee shall not be required to service the qualifying period with any subsequent employer subject to this award.

'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 a reimbursement of expense.

(c) Nominated Funds

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:

- (i) Labour Union Co-Operative Retirement Fund (LUCRF)
- (ii) TASPLAN

(d) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN or LUCRF in the following circumstances:

- (i) Where the fund subject to the exemption application is an approved fund which was established prior to 1 September 1991 and occupational superannuation contributions equivalent to three per cent of ordinary time earnings were being paid on behalf of employees on the establishment covered by this award prior to 1 September 1991 and have continued to be paid since that date; or

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- (ii) Where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or LUCRF.
- (e) Procedure for Seeking Exemption
- (i) Employees seeking exemptions in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 31 October 1991 for hearing determination.

Such application shall contain the following information:
 - (1) Name of fund into which the funds are to be paid.
 - (2) Evidence of the fund's compliance with Commonwealth Operational Standards.
 - (3) Summary of Structure and Benefits.
 - (4) Level of Administration Charge.
 - (5) Any other relevant information.
 - (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
 - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
 - (iv) An employer who commences a new business after 1 September 1991 may make application for exemption in accordance with subclause (e) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 12 September 1991.
 - (v) For the purpose of this clause, NMC Fabrications Pty Ltd is exempt from contributing to either TASPLAN or Labour Union Co-operative Retirement Fund (LUCF) however, for their employees contributions shall continue to be made in accordance with subclause (a) of this clause into the NMC Plastic Fabrication Pty Ltd No. 1 Superleader Superannuation Plan.

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30. TRAINING

- (a) 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 and flexible workforce;
 - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (iii) removing barriers to the utilisation of skills acquired.
- (b) Following proper consultation or through the establishment of a training committee, an employer shall develop a training programme consistent with:
- (i) the current and future skill needs of the enterprise;
 - (ii) the size, structure and nature of the operations of the enterprise;
 - (iii) the need to develop vocational skills relevant to the enterprise and the plastic industry through courses conducted by accredited educational institutions and providers.
- (c) Where it is agreed a training committee be established that training committee should be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example:
- formulation of a training programme and availability of training courses and career opportunities to employees;
 - dissemination of information on the training programme and availability of training courses and career opportunities to employees;
 - determining the proper application of award provisions in reference to any training programme established pursuant to subclause (b);
 - the recommending of individual employees for training and reclassification;
 - monitoring and advising management and employees on the on-going effectiveness of the training.
- (d) (i) Where it is agreed that additional training in accordance with the programme developed pursuant to subclause (b) hereof should be undertaken by an employee, that training may be undertaken either on or off-the-job. Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

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- (ii) Any costs associated with standard fees for prescribed courses and prescribed textbooks (including those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress.
- (e) Subclauses (b), (c) and (d) herein shall operate as interim provisions and shall be reviewed as part of the ongoing process of award restructuring with a target completion date of December 1991. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in subclause (a) hereof. In this connection, the unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meet the need of an individual enterprise and/or plastic industry.

Tim Abey
COMMISSIONER

31 August 2004