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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T12144 of 2005)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T12156 of 2005)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T12157 of 2005)

Private and Public Sector Awards

**The Australian Workers' Union, Tasmania Branch**

(T12163 of 2005)

Private Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case July 2005 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002005 – Safety Net Review – Award rates to be increased by \$17 per week – Wage related allowances increased by 3% - Meal allowances increased to \$13.10 – Operative date ffpp 1 August 2005 – State Minimum Wage determined at \$484.40 – s.35(1)(b)**

**FISH, AQUACULTURE AND MARINE PRODUCTS AWARD**

**ORDER BY CONSENT -**

**No. 2 of 2005  
(Consolidated)**

CLAUSES 4 AND 6 OF PART I, CLAUSE 2 OF PART III AND CLAUSES 1 AND 2 OF PART IV ARE VARIED AND THE AWARD IS CONSOLIDATED:

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

### **1. TITLE**

This award shall be known as the "Fish, Aquaculture and Marine Products Award".

### **2. INDEX**

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### **3. SCOPE**

This award is established in respect of the industries of producing and processing fish, aquaculture and marine products, however, excludes employers falling within the scope of the Shellfish Industry Award.

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

This award shall come into operation from the first full pay period commencing on or after 1 August 2005.

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## **5. AWARD INTEREST**

- (a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- (i) The Australian Workers' Union Tasmania Branch;
  - (ii) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union;
- (b) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:
- the Tasmanian Chamber of Commerce and Industry Limited.
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:
- the Tasmanian Trades and Labor Council.

## **6. SUPERSESION**

This award incorporates and supersedes the Fish, Aquaculture and Marine Products Award No. 1 of 2004 (Consolidated), No. 2 of 2004 and No. 1 of 2005.

## **7. GENERAL DEFINITIONS**

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

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

## **1. DEFINITIONS**

**'Casual Employee'** means any person who is engaged on an irregular basis to perform a range of tasks within their classification and skill level, the basis of such engagement being termination of employment at one hours notice by either the employer or employee.

Such irregular basis of employment will generally be discontinuous, but may include extended periods where the work is of a continuous nature.

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## **2. CONTRACT OF EMPLOYMENT**

### (a) General

- (i) Upon commencing work with an employer, all employees shall be classified under the relevant division of this award and at a level as prescribed in Part III - WAGES AND RELATED MATTERS, Clause 3 - Classification Descriptors of this award.
- (ii) Further, all employees prior to commencement of duties shall be provided with advice in writing, as to their determined classification level and shall remain upon such level and be paid the wage rate thereof until reclassified. Further advice in writing will be issued by the employer if an employee is reclassified.
- (iii) An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (iv) 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 employees' substantive classification for performing work of a lower classification.

### (b) Termination of Employment

- (i) Employment may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
- (ii) For the purpose of this clause, termination of employment shall include termination with or without notice.
- (iii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for serious and wilful misconduct or neglect of duty.

**PROVIDED** that any dispute or claim arising out of this subclause shall be dealt with in accordance with Part VII - CONSULTATION AND DISPUTE RESOLUTION, Clause 3 - Resolution of Disputes contained in this award.

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### **3. EMPLOYMENT CATEGORIES**

(a) Full-time Employees

Full-time employees shall be engaged by the week.

- (b) A casual employee is to be one engaged and paid as such. A casual employee for working ordinary time shall be paid an hourly rate calculated on the basis of one thirty-eighth of the weekly award wage prescribed for the work being performed plus a casual loading. The loading constitutes part of the casual employee's all purpose rate. The amount of the casual loading is 21% from the first full pay period on or after 1 October 2004, 22% from the first full pay period on or after 1 October 2005, 23% from the first full pay period on or after 1 October 2006 and 25% from the first full pay period on or after 1 October 2007.

### **4. MIXED FUNCTIONS**

Where an employee is required to carry out duties which attract a higher rate of pay than his or her substantive classification on any one day for a time exceeding two hours in the aggregate, that employee shall be paid the higher classification rate for time so worked.

If so engaged for two hours or less in the aggregate during one day the employee shall be paid the higher classification rate only for the time worked.

### **5. PIECE WORK**

Piece work rates for process attendants (as defined) shall be fixed by agreement between the employer and the employee concerned at such rates as will enable an employee working ordinary time to earn at least 15% above the prescribed rate per hour for the relevant classification level. Such rates shall, when fixed, be paid in lieu of the relevant classification level as prescribed in Part III - WAGES AND RELATED MATTERS, Clause 3 - Classification Descriptors.

## **PART III - WAGES AND RELATED MATTERS**

### **1. DEFINITIONS**

**'Can Closure Operator'** means an employee capable of operating a can closure machine.

**'Can Seam Controller'** means an employee capable of setting up and monitoring can closure operations including can seam evaluations.

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**'Loaded Rate'** means one thirty-eighth of the weekly rate for the work performed plus 20% (ie. loading in lieu of annual leave, sick leave and public holidays) plus an additional amount for shift penalties (ie. either 15%, 30%, 50% or 100% as prescribed in Part V - HOURS OF WORK, PENALTY PAYMENTS, SHIFT WORK AND OVERTIME, Clause 5 - Shift Work - Division A - Process Attendants Finfish and/or Shellfish) of one thirty-eighth of the weekly rate for the work performed.

Example: The hourly rate for a casual Process Attendant Level 1, (weekly rate \$484.40), for working an afternoon shift (15% loading) shall be calculated as follows:

	\$
1/38 <sup>th</sup> of weekly rate	12.75
plus 20% of \$12.75	2.55
Sub total	15.30
plus 15% of 1/38 <sup>th</sup> of weekly rate \$12.75	1.90
Total per hour	17.20

**'Machine Operator'** means an employee capable of operating single function fish processing equipment.

**'Operator of Steam Raising Equipment'** means an employee capable of supplying and controlling steam required for retort process and who is appropriately qualified.

**'Retort Operator'** means an employee capable of setting up and operating a retort to a scheduled process.

**'Routine Maintenance Operator'** means an employee capable of performing routine maintenance of plant and equipment and who in addition is capable of performing some minor fabrication work.

**'Section Supervisor'** means an employee capable of supervising a multiple of processing lines and who is directly answerable to the production supervisor.

**'Single Line Supervisor'** means an employee capable of supervising a single processing section or table and who is directly answerable to the section supervisor.

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## **2. WAGE RATES**

### DIVISION A - PROCESS ATTENDANTS FINFISH AND/OR SHELLFISH

- (a) Employees in a classification hereunder undermentioned shall be paid the weekly wage rate assigned opposite that classification.

Classification	Wage Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Process Attendant Level 1 (as defined)	78	325.40	159.00	484.40
Process Attendant Level 2 (as defined)	80	333.80	159.00	492.80
Process Attendant Level 3 (as defined)	93	388.00	159.00	547.00
Process Attendant Level 4 (as defined)	100	417.20	161.00	578.20

- (b) Translation Schedule

From the first full pay period on or after 15 November 1991 employees occupying classifications in the Poultry Game and Marine Products Award shall be re-classified to one of the appropriate levels as set out below:

<b>No.</b>	<b>New Classification</b>	<b>Existing Classification</b> (Poultry, Game and Marine Products Award)
1	Level 1	New Level
2	Level 2	Level 1 Process Worker
3	Level 3	Forklift Driver Boiler Attendant Refrigeration Attendant
4	Level 4	Trades Level



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DIVISION B - SEA BASED FIN FISH FARM EMPLOYEES

- (a) Adult employees of a classification hereunder undermentioned shall be paid the weekly wage rate assigned opposite that classification.

Classification	Wage Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Finfish Farm Attendant Level 1 (as defined)	90	375.50	159.00	534.50
Finfish Farm Attendant Level 2 (as defined)	101	421.40	161.00	582.40

- (b) Additional Payments

Finfish Farm Attendants (as defined) who are required by the employer to undertake diving duties shall, in addition to the rates prescribed in subclause (a) of this division receive an amount of \$2.99 per hour, or part thereof, where diving equipment, excluding tools are supplied by the employer. However, in instances where the employee supplies his or her own diving equipment, excluding tools, the amount shall be \$8.21 per hour or part thereof.

- (c) Translation Schedule

From the first full pay period on or after 15 November 1991 employees occupying classifications in the Poultry Game and Marine Products Award shall be re-classified to one of the appropriate levels as set out below:

No.	New Classification	Existing Classification (Poultry, Game and Marine Products Award)
1	Level 1	New Level
2	Level 2	Level 1 Process Worker
3	Level 3	Forklift Driver Boiler Attendant Refrigeration Attendant
4	Level 4	Trades Level

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#### DIVISION C - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

Subject to this division an employer may engage employees at a supported wage rate (as set out in subclause (c) of this division) 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 division 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 division does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this division:

- (i) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (iii) **'Disability Support Pension'** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (iv) **'Assessment instrument'** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

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(c) Supported wage rates

Employees to whom this division 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:

- (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 division, 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.

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(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 division 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 division 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 division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

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#### DIVISION D – 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 Division C - Supported Wage System is \$484.40 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 subclause (b)(i)
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and

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- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2005 State Wage Case Decision (T12144 of 2005) and all previous safety net and state wage case adjustments.

### **3. CLASSIFICATION DESCRIPTORS**

#### **'Process Attendant - Level 1'**

(% Wage relativity to Process Attendant Level 4 (as defined) = 76%)

Means an employee capable of being engaged in limited production processes including sorting, grading, trimming, washing and packaging of fish and or shellfish and who is under direct supervision. A Process Attendant - Level 1 (as defined) shall proceed to Process Attendant - Level 2 (as defined) at the completion of 380 hours service with one or more employer(s) within the industry as prescribed in Part I - APPLICATION AND OPERATION OF THE AWARD, Clause 3 - Scope.

#### **'Process Attendant - Level 2'**

(% Wage relativity to Process Attendant Level 4 (as defined) = 80%)

Means an employee capable of being engaged in functions as defined at Level 1 and in addition is capable of performing the following process functions:

filleting  
weighing  
brushing of fish and or shellfish  
capable of precise grading and inspections  
draining and tailing  
chilling of fish and shellfish  
sealing, strapping and stamping of cartons  
bulk packing and machine operator (as defined)  
can closure operator

#### **'Process Attendant - Level 3'**

(% Wage relativity to Process Attendant Level 4 (as defined) = 93%)

Means an employee capable of performing functions as defined at Level 2 and in addition includes the following:

operator of refrigeration equipment  
fork life operator (up to and including 4500kilos)  
operator of steam raising equipment (as defined)  
single line supervisor (as defined)  
retort operator (as defined)  
can seam controller (as defined).

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**'Process Attendant - Level 4'**

(% Wage relativity = 100%)

Means an employee capable of performing functions as defined at Level 3 or who is capable of performing functions of routine maintenance operator (as defined) section supervisor (as defined), and includes persons who hold qualifications at a tradesperson level and who is employed in this trade.

**'Sea Based Finfish Farm Attendant - Level 1'**

(% Wage Relativity to Process Attendant Level 4 (as defined) = 90%)

Means a person other than a hatchery employee, who has been employed for less than four months in the industry covered by the Scope of this award to:

- operate boats (including loading and unloading boats)
- moor pens
- wash and change nets
- move materials and equipment
- harvest fish (including bleeding)
- husband fish (including observing, separating, mortality retrieval, feeding)
- record fish farm data
- carry out general housekeeping and maintenance
- carry out basic net repairs
- may be required to perform diving duties

**'Sea Based Finfish Farm Attendant - Level 2'**

(% Wage Relativity to Process Attendant Level 4 (as defined) = 101%)

Means a person other than a hatchery employee with more than four months service in the industry covered by the Scope with one or more employer who is employed on a finfish farm to:

- operate boats (including loading and unloading boats)
- moor pens
- wash and change nets
- move materials and equipment
- harvest fish (including bleeding)
- husband fish (including observing, separating, mortality retrieval, feeding)
- record fish farm data
- carry out general housekeeping and maintenance
- carry out basic net repairs
- may be required to perform diving duties

**4. NO REDUCTION OF WAGES IN CERTAIN CASES**

Subject to the provisions of Part III - WAGES AND RELATED MATTERS, Clause 2 - Wage Rates, of this award, where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee, the wage rates so paid in excess shall not be reduced as a result of this award.

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## **5. PAYMENT OF WAGES**

- (a) Wages may be paid weekly, fortnightly or by agreement between the employer and employee for some other period.
- (b) All such wages, allowances and other monies due shall be paid in cash or by agreement between the employer and employees by cheque, bank cheque, bank or similar transfer or combination thereof.
- (c) Particulars of details of payment to each employee shall be included on a pay envelope including the payment, or in a statement handed to the employee at the time payment is made and shall contain the following information:
  - (i) Date of payment
  - (ii) Period covered by such payment
  - (iii) The amount of wages paid for work at ordinary rates
  - (iv) The gross amount of wages and allowances paid
  - (v) The amount of each deduction made and the nature thereof
  - (vi) The net amount of wages and allowances paid
  - (vii) Details of superannuation payments

In addition, the following details will also be included in the statement when such payments and benefits apply:

- (viii) The number of hours paid at overtime rates and the amount paid therefor
  - (ix) The amount of allowances or special rates paid and the nature therefor
  - (x) Annual holiday payments
  - (xi) Payment due on termination, including payment for annual leave, rostered day off accumulation and public holidays
- (d) Upon termination provided the appropriate notice has been given all monies due to the employee exclusive of superannuation, shall be paid at the time of termination.

**PROVIDED** that where this is not practicable the employer shall have twenty four hours in which to make such payment.

- (e) The provisions of subclause (c) of this clause shall apply from 1 July 1992.



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## **6. SUPERANNUATION**

(a) For Employees in Division A - Process Attendants Finfish and/or Shellfish of Part III - Wages and Related Matters, Clause 2 - Wage Rates and Clause 3 - Classification Descriptors the following shall apply:

(i) Contributions

- (1) The employer shall make an occupational superannuation contribution equivalent to 9% of ordinary time earnings (as defined) into the funds known as Australian Primary Superannuation Fund, TASPLAN or F.I.S.T. or any other approved fund (as defined) where an exemption has been granted under subclause (a)(iii) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual employees entitled to contributions under the provisions of subclause (a)(i)(3) of this clause.
- (2) 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.
- (3) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (a)(i)(1) of this clause, a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 9% represents less than such amount.
- (4) For new employees contributions shall commence from the date the employee commenced employment.
- (5) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i)(1) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (6) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(ii) Definitions

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

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**'Australian Primary Superannuation Fund'** shall mean the fund established by Trust Deed Consolidated on 28<sup>th</sup> February 2004 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'Food Industry Superannuation Trust'** shall mean the superannuation fund established by Trust Deed dated 12 January 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation funds.

**'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 expenses.

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

(iii) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into Australian Primary Superannuation Fund, TASPLAN or F.I.S.T. in the following circumstances:

- (1) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (2) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than into Australian Primary Superannuation Fund, TASPLAN or F.I.S.T.

(iv) Procedure for Seeking Exemption

- (1) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 March 1992 for hearing and determination.

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Such application shall contain the following information:

- (A) Name of Fund into which the funds are to be paid.
  - (B) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (C) Summary of Structure and Benefits.
  - (D) Level of Administration Charge.
  - (E) Any other relevant information.
- (2) 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.
- (3) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (4) An employer who commences a new business after 15 November 1991 may make application for exemption in accordance with subclause (a)(iii) 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 15 November 1991.
- (b) For Employees in Division B - Seabased Finfish Farm Employees of Part III - Wages and Related Matters, Clause 2 - Wage Rates and Clause 3 Classification Descriptors the following shall apply:
- (i) Contributions
    - (1) The employer shall make an occupational superannuation contribution equivalent to 9% of ordinary time earnings (as defined) into the fund known as Australian Primary Superannuation Fund, TASPLAN or any other approved fund (as defined) where an exemption has been granted under subclause (b)(iii) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual employees entitled to contributions under the provisions of subclause (b)(i)(3) of this clause.
    - (2) 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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- (3) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (b)(i)(1), a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 9% represents less than such amount.
- (4) For new employees contributions shall commence from the date the employee commenced employment.
- (5) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (b)(i)(1) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (6) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(ii) Definitions

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

**'Australian Primary Superannuation Fund'** shall mean the fund established by Trust Deed Consolidated on 28<sup>th</sup> February 2004 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'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 expenses.

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

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(iii) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into Australian Primary Superannuation Fund, TASPLAN in the following circumstances:

- (1) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (2) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than Australian Primary Superannuation Fund or TASPLAN.

(iv) Procedure for Seeking Exemption

- (1) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 March 1992 for hearing and determination.

## **PART IV - ALLOWANCES**

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

Any full time employee holding first aid qualifications from Red Cross or St John Ambulance and appointed by the employer to perform first aid duty shall receive \$2.25 per working day.

### **2. MEAL ALLOWANCE**

- (a) An employee required to work overtime for more than two hours shall either be supplied with a meal by the employer or paid \$13.10 for each meal. For the purpose of this clause a meal shall consist of a recognised main course.
- (b) Unless the employer advises an employee on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second or subsequent meal or make payment in lieu thereof as above prescribed.

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- (c) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime or is required to work less than the amount advised, he shall be paid as above prescribed for meals which he has provided but which are surplus.

### **3. TOOL ALLOWANCE**

All employees who are required to use tools shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.80 per week.

**PROVIDED** that such allowances shall not be subject to adjustment when computing payments for shift penalty rates, for Saturday, Sunday or holiday work, for overtime or for any other purposes.

### **4. TRAVEL TIME AND ALLOWANCE**

- (a) An employee who on any day or from day to day is required to work at a workplace away from the usual workplace shall, at the direction of the employer, present for work at such workplace at the usual starting time; but all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent in travelling from the employees home to usual workplace and returning) travelling time shall be paid at ordinary rates of pay.
- (b) Where an employee is required to remain away from their usual place or residence the employee shall be paid for all expenses reasonably incurred whilst so absent.
- (c) Where an employee with the approval of the employer, is required to use a private motor vehicle for the purposes of the employer, then the employee will be paid 31 cents per kilometre travelled.

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

### **1. DEFINITIONS**

**'Afternoon shift'** means any shift finishing after 6.00 p.m. and at or before midnight.

**'Continuous work'** means work carried on with consecutive shifts of employees throughout the twenty-four hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

**'Night shift'** means any shift finishing subsequent to midnight and at or before 8.00 a.m.

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**'Rostered shift'** means a shift of which the employee concerned has had at least forty-eight hours notice.

## **2. HOURS OF WORK**

(a) For Employees in Division A - Process Attendants Finfish and/or Shellfish of Part III - WAGES AND RELATED MATTERS Clause 2 - Wage Rates and Clause 3 - Classification Descriptors, the following shall apply

(i) The ordinary hours of work per week shall be 38 hours to be mutually arranged between the employer and the employee between the hours of 6.00 a.m. and 6.00 p.m. Monday to Friday inclusive and not more than 8 hours per day at ordinary time, provided the work is performed in one continuous period exclusive of meal breaks.

**PROVIDED** that ordinary hours of work as prescribed in this clause may be increased, but shall not exceed a total of 10 hours on any day at ordinary rates, between the times as specified for the commencement and cessation or work for the purpose of arranging hours so that employees work:

(1) not more than 9 days (Monday to Friday) in each two (2) week cycle; or

(2) not more than 19 days (Monday to Friday) in each four (4) week cycle.

(ii) The employer may utilise any day of the week (Monday to Friday) as a rostered day off and shall also have the right to change an employee's rostered day off provided that employee is given not less than 24 hours notice of such change and further provided that the day off is taken in the current work cycle.

(b) For Employees in Division B - Seabased Finfish Farm Employees of Part III - WAGES AND RELATED MATTERS, Clause 2 - Wage Rates and Clause 3 Classification Descriptors the following shall apply

(i) The ordinary hours of work shall be 38 hours per week over a maximum of 5 consecutive days to be worked between 5.00 a.m. and 7.00 p.m. from 1 October to 31 March (inclusive) and between 6.00 a.m. and 6.00 p.m. from 1 April to 30 September (inclusive) on any day Monday to Friday inclusive.

(ii) The normal work cycle shall be Monday to Friday inclusive.

**PROVIDED** that by agreement between the employer, the employee and the union, the following additional work cycles may also be worked:

(1) Sunday to Thursday inclusive

(2) Tuesday to Saturday inclusive

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- (iii) Any existing employees current work cycle may only be changed by mutual agreement between the employer and the employee, and further that where agreement cannot be reached the matter shall be resolved in accordance with Part VII - CONSULTATION AND DISPUTE RESOLUTION, Clause 3 - Resolution of Disputes of this award.
- (iv) Employers may require employees to work up to eight hours on any one day as ordinary time.

**PROVIDED** however that ordinary hours of work as prescribed in this subclause may be increased but shall, by agreement between the employer and the employee, not exceed a total of 10 hours on any day at ordinary rates between the times as specified for the commencement and cessation or work for the purpose of arranging hours so that employees work:

- (1) not more than 9 days (Monday to Friday) in each two (2) week cycle; or
- (2) not more than 19 days (Monday to Friday) in each four (4) week cycle.

- (v) Work Outside the Span of Hours

Notwithstanding any other subclause of this clause:

- (1) all employees, the majority of whose hours of work fall within those prescribed in subclause (b)(i) of this clause and are required to work outside this span of hours and/or
- (2) all employees who work on Saturday or Sunday as part of the work cycle shall have such time worked, outside of the provisions of subclause (b)(i) of this clause, considered as ordinary hours of work and shall receive, for such time worked outside the provisions of subclause (b)(i) of this clause the rate of pay as prescribed in subclause (vi)(1) - Overtime Rates, of this clause.

- (vi) Overtime Rates

- (1) For all time of duty in excess of 38 hours per week or before the time fixed for commencing work or after the time fixed for ceasing work or on a Saturday or Sunday, or in excess of eight hours per day, payment shall be made at the penalty rate prescribed in Part V - HOURS OF WORK, PENALTY PAYMENTS, SHIFT WORK AND OVERTIME, Clause 3 - Holiday, Saturday, Sunday and Overtime Payments.
- (2) In computing overtime each days work shall stand alone.



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- (3) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
- (4) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours work at the appropriate overtime rate.

(vii) Start and Finish Time

- (1) The actual start and finish times shall be nominated by the employer and shall not be changed without giving at least 7 days notice.
- (2) Notwithstanding the above where it is necessary to change start and finish times due to emergency circumstances, e.g. breakdowns, sickness or other reasons beyond the employer's control, an employee shall be advised of such change of work hours on the previous working day.

(viii) Rostered Day Off

The employer may utilise any day of the week (Monday to Friday) as a rostered day off and shall also have the right to change an employee's rostered day off provided that employee is given not less than 24 hours notice of such change and further provided that the day off is taken in the current work cycle.

### **3. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENTS**

(a) (i) Payment for work on Holidays for Full-time Employees

The wages that shall be paid to full time employees for work performed on holidays as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay of this award, shall be double time and one half.

(ii) Payment for work of Saturday and Sunday for Full-time Employees

- (1) Saturday work - the amount of wages that shall be paid to full-time employees who perform work on Saturdays shall be at the rate of time and one half the ordinary rate for the first three hours and double time thereafter.
- (2) Sunday work - the amount of wages that shall be paid to full-time employees who perform work on Sundays shall be double the ordinary rate.

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(iii) Payment for work on Overtime for Full-time Employees

Subject to the provisions of Part V - HOURS OF WORK, PENALTY PAYMENTS, SHIFT WORK AND OVERTIME, Clause 2 - Hours of Work, subclause (a)(ii), a full-time employee who performs work in excess of 38 hours per week or before the time fixed for commencing work or after the time fixed for ceasing work or in excess of eight hours per day, shall receive payment at the rate of time and one half for the first three hours and double time thereafter. In computing overtime each day's work shall stand alone.

(iv) Payment for work on Holidays, Saturdays, Sundays and Overtime for Casual Employees

A casual employee working on Holidays as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, Saturdays, Sundays and Overtime shall be paid the applicable classification hourly rate defined of Part III - WAGES AND RELATED MATTERS, Clause 2 - Wage Rates and Clause 3 - Classification Descriptors plus the applicable penalty rates as described in subclauses (a), (b) and (c) of this clause.

**PROVIDED** that the loading applicable under Part II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 3 - Employment Categories, subclause (b) Casual Employees, paragraph (v) does not apply to casual employees who are employed to work Holidays, Saturdays, Sundays and Overtime.

(b) Minimum Payment for Work on Holidays with Pay

Full-time employees and casual employees who are required to work on any of the days prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, and this sub clause shall be paid a minimum as for 3 hours worked at the appropriate penalty rate.

(c) Call Out

Full-time employees and casual employees recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours work at the appropriate overtime rate.

(d) Rest Period After Overtime

If a full-time employee or a casual employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.

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#### **4. MEAL PERIOD**

- (a) There shall be a cessation of work each day for the purpose of taking an unpaid meal break of not less than thirty minutes.
- (b) If, when the meal time customary in the industry arrives, an employee is required to continue working and his meal interval is thereby deferred, he shall be paid at the rate of time and one half for the first half hour of such deferral and at the rate of double time for any further time elapsing until he gets a meal interval of the customary duration.

**PROVIDED** that if the continuance of work is reasonably necessary and could not have been avoided by any reasonable action of the employer, the employee shall be allowed time not exceeding twenty minutes before such penalty rate time begins to accrue.

- (c) If on a day, not a Sunday or holiday as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, an employee, after working for five hours without a meal break, does not then get a meal interval of the customary duration, he shall be paid at the rate of double time for all time elapsing from the end of the five hours until he gets such meal interval.
- (d) An employee shall not be required to work for more than four hours on a Sunday or holiday, as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, or more than four hours overtime on any day without a meal interval of at least forty-five minutes.
- (e) Two rest periods of ten minutes duration on each day or shift to be counted as time worked shall be allowed without deduction of pay. The employer shall fix the time for the commencement of the tea break and shall provide the necessary facilities and the labour to prepare beverages for the employees at the commencement of each rest period.

#### **5. SHIFT WORK - DIVISION SHELLFISH A - PROCESS ATTENDANTS FINFISH AND/OR**

- (a) Prior to the implementation of shift work (except where shift work is already being performed prior to the making of this award) the employer shall notify the employee(s) and the relevant union(s) of their intention to commence shift work and discussions taking place with the relevant union, the provisions of this clause shall only be enacted where the period of shift work to be worked shall be not less than four weeks duration.

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(b) Hours - Continuous Work Shifts

This subclause shall apply to shift workers on continuous work as hereinbefore defined. The ordinary hours of shift workers shall average 38 per week inclusive of crib time and shall not exceed 152 hours in twenty-eight consecutive days; provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period exceeding 28 consecutive days.

Subject to the following conditions, such shift workers shall work at such times as the employer may require:

- (i) a shift shall consist of not more than 10 hours inclusive of crib time. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned;
- (ii) except at the regular change-over of shifts, an employee shall not be required to work more than one shift in each twenty-four hours;
- (iii) twenty minutes shall be allowed to shift workers each shift for crib which shall be counted as time worked.

(c) Hours - Other than Continuous Work

This subclause shall apply to shift workers not upon continuous work as hereinbefore defined. The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (i) 38 hours within a period not exceeding seven consecutive days; or
- (ii) 76 hours within a period not exceeding fourteen consecutive days; or
- (iii) 114 hours within a period not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a period not exceeding twenty-eight consecutive days.

The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than five hours without a break for a meal. Except at regular change-over of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

**PROVIDED** that the ordinary hours of work prescribed herein shall not exceed 10 hours on any day. Provided further that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned.

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(d) Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

(e) Variation by Agreement

Subject to (b) Hours - Continuous Work Shifts and (c) Hours - Other than Continuous Work of this subclause, the method of working shifts may in any case be varied by agreement between the employer and the majority of employees concerned.

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or, in the absence of agreement, by seven days notice of alteration given by the employer to the employees.

(f) Shift Allowances

(i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his ordinary rate.

(ii) A shift worker who works on an afternoon or night shift which does not continue:

(1) for at least 5 successive afternoons or nights in a 5 day workshop or 6 successive afternoons or nights in a 6 day workshop; or

(2) for at least the number of ordinary hours prescribed by one of the alternative arrangements in (b) Hours - Continuous Work Shifts or (c) Hours - Other than Continuous Work of this subclause, shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof, in addition to his ordinary rate.

(iii) An employee who:

(1) during a period of engagement on shift, works night shift only; or

(2) remains on night shift for a longer period than four consecutive weeks; or

(3) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle,

shall during such engagement period or cycle be paid 30 per cent more than his ordinary rate for all time worked during ordinary working hours on such night shift.

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**PROVIDED** that for a casual employee (as defined) engaged in shift work shall receive an amount of wages as prescribed in 'loaded' rate as defined in Part III - WAGES AND RELATED MATTERS, Clause 1 - Definitions.

(g) Saturday Shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (f) of this clause.

(h) Overtime

Shift workers for all time worked in excess of hours outside the ordinary working hours prescribed by this award or on a shift other than a rostered shift shall -

- (i) if employed on continuous work be paid at the rate of double time; or
- (ii) if employed on other shift work at the rate of time and a half for the first three hours and double time thereafter,  
except in each case when the time is worked -
- (iii) by arrangement between the employees themselves;
- (iv) for the purpose of effecting the customary rotation of shifts; or

**PROVIDED** when not less than 8 hours notice has been given to the employer by a relief worker that the employee will be absent from work and the employee whom he should relieve is not relieved and is required to continue to work on his rostered day off, the unrelieved employee shall be paid double time.

(i) Requirements to Work Reasonable Overtime

An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(j) Sundays and Holidays

- (i) Shift workers on continuous shifts for work on a rostered shift the major portion of which is performed on a Sunday shall be paid at the rate of double time.
- (ii) Shift workers on other than continuous work for all time worked on a Sunday or holiday shall be paid at the rates prescribed by Part V - HOURS OF WORK AND OVERTIME, Clause 3 - Holiday, Saturday, Sunday & Overtime Payments of this award.

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- (iii) Where shifts commence between 11 p.m. and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate.

**PROVIDED** that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay and extending into a Sunday or holiday as prescribed in Part VI - Clause 4 - Holidays with Pay, shall be regarded as time worked on such Sunday or holiday as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay.

- (iv) Where shifts fall partly on a holiday as prescribed Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(k) Daylight Saving

Notwithstanding anything contained elsewhere in this award, in any area where by reason of the legislation of a State summer time is prescribed as being in advance of the standard time of that State the length of any shift:

- (i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period, and
- (ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period,

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

In this subclause the expressions 'standard time' and 'summer time' shall bear the same meaning as are prescribed by the relevant State legislation.

- (l) The provisions of this clause shall not apply to employees in Division B - Seabased Finfish Farm Employees of Part III - WAGES AND RELATED MATTERS, Clause 2 - Wage Rates and Clause 3 - Classification Descriptors.

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

### **1. DEFINITIONS**

'**Show Day**' means not more than one local show day observed on an employees ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which 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.

### **2. ANNUAL LEAVE**

#### (a) Period of Leave

- (i) A period of 152 hours leave shall be allowed annually to an employee other than a casual employee after 12 months continuous service in the service of the same employer.
- (ii) In addition to the leave prescribed herein in paragraph [i] of this clause, employees who are cyclic roster workers, that is workers who are rostered to work regularly on Saturday and/or Sundays and statutory holidays, shall be allowed 38 paid working hours leave. Such additional leave shall accrue on the basis of 4.38 hours for each completed six week cycle whilst on the cyclic roster.

#### (b) Time of Taking Leave

Leave allowable under this clause shall be given within three months of the date on which such leave became due or at a time mutually agreed by the employer and the employee.

#### (c) Payment in lieu Prohibited

Except as provided in subclause (e) of this clause, payment shall not be made or accepted in lieu thereof.

#### (d) Payment for Period of Leave

- (i) All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.
- (ii) In addition thereto, all employees before going on annual leave shall receive a loading of 17 1/2% on payments made for annual leave. Such loading shall not apply to proportionate leave on termination of service, exception where termination by the employer is no fault of the employee.



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(e) Proportionate Leave on Termination of Service

An employee, after one months continuous service inclusive of any day as prescribed by Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay and Clause 6 - Sick Leave, who either leaves the employment or is terminated in accordance with Part II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 2 - Contract of Employment, subclause (b) - paragraph (i), shall be paid at a rate of 2.923 hours for each completed week of service.

(f) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay of this award, fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

(g) Broken Leave

Annual leave shall be taken in a continuous period provided that when the employee and the employer mutually agree then leave may be taken in more than one period, however, one such period must be of at least 76 hours over consecutive days.

(h) Any disputes under this clause shall be determined by the Tasmanian Industrial Commission, whose decision shall be final.

### **3. BEREAVEMENT LEAVE**

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 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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#### **4. HOLIDAYS WITH PAY**

- (a) All full time employees shall be allowed the following days as paid holidays:

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

- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when if it were not for such holiday, the employee had been at work.
- (c) Where any of the aforementioned holidays, excluding Anzac Day, fall on a Saturday, Sunday or Rostered Day Off and are observed on the Saturday, Sunday or Rostered Day Off respectively, then the following ordinary working day shall be regarded as a holiday for the purposes of this award.
- (d) Where the employer and employees mutually agree then any other day may be substituted for any of the above named days.

#### **5. PARENTAL LEAVE**

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

- (a) Definitions

For the purposes of this clause:

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

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- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
  - (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
  - (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
  - (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
  - (vii) **'Spouse'** includes a de facto or a former spouse.
- (b) Entitlement
- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
  - (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
    - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
    - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
  - (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;
    - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least 4 weeks.

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

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- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

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

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and

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- (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental leave and other entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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

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

(v) Transitional Arrangements - Sick Leave

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

(vi) Part-time Work Agreement

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

(A) that the employee may work part-time;

(B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(C) upon the classification applying to the work to be performed; and

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(D) upon the period of part-time employment.

(2) The terms of this agreement may be varied by consent.

(3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

(4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

(1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

(2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

(1) limiting the number of employees who may work part-time;



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- (2) establishing quotas as to the ratio of part-time to full-time employees;
  - (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
  - (4) requiring consultation with, consent of or monitoring by a union;
- and such provisions do not apply to part-time work under this clause.

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
  - (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and sick leave apply to the part-time employment of replacement employees.
  - (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
  - (iv) Unbroken service as a replacement employee shall be treated as continuous service.
  - (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (i) Return to former position after a period of parental leave or part time work

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

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) clause, the employee will be entitled to return to the position they held immediately before such transfer.

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

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

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

## **6. SICK LEAVE**

- (a) A full time employee, entitled to sick leave payments who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) an employee shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
  - (ii) the employee shall, wherever possible, inform the employer of his inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
  - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
  - (iv) subject to subclause (v) hereof an employee shall not be entitled in any year to sick leave credit in excess of 76 ordinary hours;

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- (v) **PROVIDED** that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(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;
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

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

### **1. ENTERPRISE FLEXIBILITY**

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

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

## **2. PRODUCTIVITY AND EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered in the Scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by its elected union delegates or duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled workforce;

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- (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.
- (h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of the resolution of disputes clause.

### **3. RESOLUTION OF DISPUTES**

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

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

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

### **1. CLOTHING**

- (a) Where an employee is required by the employer to wear a washable outer garment such employee shall be provided by the employer, free of cost to the employee, with serviceable outer garments.
- (b) Where any wet work is performed waterproof aprons, rubber boots and rubber gloves shall be provided free of cost to the employee.
- (c) Where the nature of the work requires an employee to wear waterproof pants and raincoats, they shall be provided by the employer free of cost to the employee on a fair wear and tear basis and be of such quality as is appropriate to the nature of the work.

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- (d) Items of clothing as provided for in this clause shall remain the property of the employer. The loss of such clothing due to any cause arising out of neglect or misuse by the employee shall be a charge against the wages of the employee, provided that no charge shall be made in respect of reasonable wear and tear.

## **2. FIRST AID**

The employer shall provide and maintain, in accordance with the *Workplace Health and Safety Act 1995* and the *Workplace Health and Safety Regulations 1998*, a first aid outfit including an affixed listing of current employees holding a first aid certificate.

## **3. SAFETY EQUIPMENT**

All safety equipment issued by the employer must be worn or used by an employee at the direction of the employer.

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

## **1. NOTICE BOARD**

The employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in his establishment, upon which an accredited union representative shall be permitted to post formal union notices, signed or countersigned by the representative posting them. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

## **2. TIME AND EMPLOYMENT RECORD**

- (a) All employees including those employees who work in accordance with Part II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 5 - Piece Work, shall indelibly record their daily time of beginning and ceasing work in a book, on time cards, or by mechanical contrivance. Any one of such means of recording shall be provided and maintained by the employer.
- (b) An employer shall keep a record from which can readily be ascertained the name of each employee, the relevant classification level as prescribed in of Part III - WAGES AND RELATED MATTERS, Clause 2 - Wage Rates and Clause 3 - Classification Descriptors of this award, the hours worked each day and the wages and allowances paid each week, or in the case of casual employees (as defined) the wages and allowances paid for each period of employment.

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The record must show the employees date of birth, tax file number, commencement date and if appropriate termination date, superannuation membership number and contributions, record of sick leave and record of leave entitlements.

- (c) All employees, including casual employees (as defined) shall be provided, upon written request or upon termination of employment, with advice in writing of such details of employment as prescribed subclause (b) of this clause.

P C Shelley  
**DEPUTY PRESIDENT**

28 July 2005