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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Minister administering the State Service Act 2000**

(T12871 of 2007)

**AWU (TASMANIAN STATE SECTOR) AWARD**

**FULL BENCH:**

PRESIDENT P L LEARY  
COMMISSIONER T J ABEY  
COMMISSIONER J P McALPINE

**Award variation – arbitrated safety net adjustments – application amended – all public sector awards - application approved – operative date ffpp 13 August 2006**

**ORDER BY CONSENT -**

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

AMEND THE **AWU (TASMANIAN STATE SECTOR) AWARD** BY DELETING PART I - CLAUSES 4 AND 5, PART III – CLAUSES 2 AND 3, PART IV – CLAUSES 5 AND 11, AND PART V – CLAUSE 6 CONTAINED THEREIN, AND INSERTING IN LIEU THEREOF THE FOLLOWING; 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 "AWU (Tasmanian State Sector) Award".

### **2. INDEX**

#### SUBJECT MATTER

#### CLAUSE NO.

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### **3. SCOPE**

This award shall apply in respect of the employment of all employees in work done or in connection with the following:

- (a) Construction, alteration, repair and maintenance of railways, tramways, roads, freeways, causeways, aerodromes, civil engineering works, gardens, parks, reserves, fences, racetracks, walking tracks, drains, dams, weirs, bridges, overpasses, underpasses, channels, waterworks, pipe tracks, tunnels, water and sewerage works, conduits, and all concrete work and preparation incidental thereto.
- (b) Forestry, Horticulture, Agriculture including Dairy Farming, Aquaculture and Mariculture.
- (c) Land clearing, preparation, maintenance and protection.
- (d) Soil conservation, vermin and noxious weed control and eradication.

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

This award shall come into operation from the beginning of the first full pay period to commence on or after 13 August 2006.

#### **5. SUPERSESION**

- (a) This award incorporates and supersedes the AWU (Tasmanian State Sector) Award No 2 of 2006 (Consolidated), and No 1 of 2007.
- (b) This award is to be read in conjunction with the provisions of the *State Service Act 2000* and Regulations made there under and Ministerial and State Service Commissioner Directions issued pursuant to s.14 and s.20 respectively of the *State Service Act 2000*.

#### **6. AWARD INTEREST**

- (a) The following employee organisation is deemed to have an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*;

The Australian Workers' Union, Tasmania Branch

- (b) The employer deemed to be an employer organisation having an interest in this award, pursuant to Section (62(4) of the *Industrial Relations Act 1984* is;

The Minister administering the *State Service Act 2000*;

- (c) All employees who are covered by classifications contained in this award.

#### **7. DEFINITIONS**

**"Casual employee"** means a fixed term employee who is employed pursuant to s.37(3)(b) of the *State Service Act 2000*, on an irregular basis to perform work over a specified period of time or to perform a specified task, provided always that the period of time or duration of the specified task does not exceed eight weeks.

**"Call out"** means the circumstances in which an employee, as a consequence of being called out, actually returns to the workplace or a place of work.

**"Commission"** means the Tasmanian Industrial Commission.

**"Day"** means a calendar day.

**"Employee"** means either a permanent employee, including a full-time and part-time employee, or a fixed term employee, including a full-time, part-time or casual employee engaged pursuant to section 37(3) of the *State Service Act 2000*.

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**“Employee organisation”** means The Australian Workers’ Union, Tasmania Branch

**“Employer”** means the Minister administering the *State Service Act 2000*.

**“Fixed term employee”** means a person appointed pursuant to s.37(3)(b) of the *State Service Act 2000* for a specified term or for the duration of a specified task and may include a full-time, part-time or casual employee.

**“Full-time employee”** means a person who is engaged to work 38 ordinary hours per week.

**“Leave”** means an approved absence from work.

**“Leave year”** means the 12-month period during which leave accumulates and which commences from the first anniversary of the date of employment.

**“Part-time employee”** means a person who is engaged on a regular basis to work less than the ordinary hours prescribed in Part V, Clause 1 - Working Hours - Day Work and Clause 2 - Working Hours - Shift Work.

**“Permanent employee”** means a person appointed as such pursuant to s.37(3)(a) of the *State Service Act 2000*.

**“Working day”** in relation to an employee not on shift work, means a day other than a Saturday, Sunday or holiday specified in Part VI, Clause 7 - Holidays With Pay.

## **PART II - EMPLOYMENT RELATIONSHIP**

### **1. EMPLOYMENT CATEGORIES**

(a) General

At the time of engagement of any employee the employer shall inform the employee, in writing, of the terms of their engagement, and with respect to a fixed term employee, the duration, or estimated duration of the engagement.

(b) Full-time employment

(i) Employment will be by the week unless an employee is specifically engaged as a casual. Where at least eight weeks’ continuous employment is available, an employee shall be engaged by the week and be paid and classified as such.

(ii) A full-time employee is one who is engaged to work 38 ordinary hours per week.

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(c) Part-time employment

- (i) A part-time employee is one who is engaged either on a permanent or fixed term (including casual) basis to work less than the ordinary hours prescribed in Part V Clause 1, Working Hours - Day Work and Clause 2, Working Hours - Shift Work.
- (ii) The hourly rate for a part-time employee is 1/38th of the weekly rate in this award for a full-time employee performing like duties.
- (iii) A part-time employee will receive payment on a pro rata basis for annual leave, sick leave and public holidays that fall upon a day on which that employee would normally work.
- (iv) All time which a part-time employee is required to work outside of, or in excess of, the ordinary working hours fixed by Part V Clause 1, Working Hours - Day Work or Clause 2, Working Hours - Shift Work, will be regarded as overtime and paid according to Clause 5, - Overtime of that Part.
- (v) The other conditions of employment for part-time employees will be those prescribed elsewhere in this award, except to the extent that they are superseded or modified by the provisions of this clause.

(d) Casual employment

- (i) A casual employee shall not be engaged for more than eight weeks on any one engagement.
- (ii) For working ordinary time a casual will be paid 1/38th of the weekly wage plus a loading of 20%.
- (iii) The 20% loading is in lieu of annual leave, sick leave and public holidays not worked, and to compensate for the nature of casual employment.
- (iv) When a casual employee works overtime or on a holiday with pay specified in Part VI Clause 7 - Holidays with Pay, the casual rate will be the base upon which the appropriate overtime or holiday penalty rate is applied.

(e) Trainees

The training and employment conditions of trainees are prescribed in the *Tasmanian State Service National Training Wage Award*.

## **2. TERMINATION OF EMPLOYMENT**

The provisions of this clause are to be read in conjunction with, and subject to, the provisions of ss.43, 44 and 45 of Part 7 of the *State Service Act 2000*.

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(a) Notice of termination by employer

(i) In order to terminate the employment of an employee other than a fixed term employee (including a casual employee), the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

(ii) In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

(iii) Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

(iv) In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

(v) The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal.

(vi) Notwithstanding the foregoing provisions, trainees who are engaged for a specific period of time shall, once the traineeship is completed and provided that the trainees' services are retained, have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of the traineeship and is re-engaged by the employer within six months of such termination, the period of traineeship shall be counted as service in determining any future termination.

(vii) Termination of all casual engagements whether the employee has commenced work or not, shall require one day's notice on either side or the payment or forfeiture of one day's pay as the case may be.

(viii) Notice given at or before the usual starting time of any ordinary working day shall be deemed to expire at the completion of that day's work.

(ix) For the purpose of this clause, continuity of service shall be calculated in the manner prescribed in Part VI, Clause 1(m).

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(b) Notice of termination by an employee

- (i) The notice of termination required to be given by an employee is the same as that required of the employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.
- (ii) If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

(c) Time off during notice period

Where the employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

### **PART III - RATES OF PAY AND RELATED MATTERS**

#### **1. CLASSIFICATION DESCRIPTORS**

(a) Department of Tourism, Parks, Heritage and the Arts

(i) Royal Tasmanian Botanical Gardens

(1) Level 1 -Trainee

- (A) An employee at this level will have no previous experience in respect to the nature of work performed at the Royal Tasmanian Botanical Gardens.
- (B) An entry level employee will be required to participate in structural induction training which will include units of competency in respect to the following:
  - general occupational health and safety;
  - site familiarisation;
  - communications;
  - legal responsibility with regard to the general public.
- (C) An entry level employee will work under direct supervision and will only be required to perform basic labouring tasks.



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(2) Level 2 - Trades assistant

- (A) An employee at this level will have a basic understanding of the work to be performed at the Royal Tasmanian Botanical Gardens and will work under direct supervision.
- (B) An employee at this level will be required to perform routine manual tasks and/or operate basic equipment requiring previous training or experience. The employee will exercise minimal judgment in deciding how tasks are to be performed. Work includes:
- basic labouring tasks associated with developing and maintaining the Royal Tasmanian Botanical Gardens, including but not limited to:
    - digging, tilling, excavation, sweeping, raking, spreading mulch, watering, white washing etc;
    - operating equipment including but not limited to:
      - cement mixer, push motor mower, brush cutter, rotary hoe, handheld power tools, workshop equipment, slinging and lifting equipment.
    - The employee will hold a current class A drivers licence.
    - The employee assists trades persons in a broad range of functions including but not limited to:
      - landscaping, preparing areas for planting, planting, pruning, development and maintenance of nursery collections, maintenance of plant, equipment and facilities (involving plumbing, carpentry, painting, welding, fitting and turning).
- (C) Progression to level 3 will be possible when the employee is capable of performing the majority of tasks prescribed at this level and is capable of performing some or all of the tasks prescribed in level 3.

(3) Level 3 - Advanced trades assistant

- (A) An employee at this level will be capable of performing tasks of the level prescribed in level 2, will work under regular general supervision and may be required to exercise minimal discretion in respect to performing some or all of the following tasks:

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- assist trades person by utilising advanced skills in excess of those prescribed at level 2;
  - operate plant and equipment, and hold current drivers and machinery licences appropriate to the work to be performed, including, but not limited to:
    - class A drivers licence;
    - LBLT (medium rigid 4.5 to 15 tonnes gross vehicle mass);
    - public vehicle licence (as appropriate);
    - machinery endorsement as appropriate.
    - equipment includes, but is not limited to:
      - standard passengers vehicles, including 4 wheel drive, non-articulated;
      - heavy vehicles to 15 tonne, 45 HP tractor, skid steer loader, stone saw etc.
- (B) Progression or appointment to level 4 will be possible by obtaining a trades certificate or by being granted trades person's rights in appropriate areas through the Training Authority of Tasmania or by being deemed by the employer to perform work or take equivalent responsibility to trades work.
- (4) Level 4 - Tradesperson
- (A) An employee at this level will be required to perform trades work, and possess a trades certificate or equivalent recognition of prior learning, or be deemed by the employer to perform work or take equivalent responsibility to trades work:
- Responsibility for management of a specific section or garden or equivalent area of responsibility (as deemed by the employer) may be assigned to employees at this level, as may be the degree of supervision of apprentices or assistants expected at trades level.
  - Employees at this level must hold appropriate current drivers licences and endorsements appropriate to the work to be performed.

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- (B) Progression to level 5 will be by appointment when the employee is required to perform work and hold a qualification beyond that of tradesperson (post-trade additional training appropriate to the work to be performed).
- (5) Level 5 - Advanced tradesperson
  - (A) An employee at this level will be required to hold and apply specialised training which is both relevant to the position and in addition to the appropriate trade qualifications and to exercise skill and judgment beyond that of base trade.
  - (B) In this respect an employee may be required to accept responsibility for specific operational programs such as arboriculture or turf care and/or the management of small projects and may include:
    - estimating and ordering;
    - determining and assigning work priorities;
    - staff control and training;
    - maintenance of records and basic report writing.
  - (C) Employees at this level must hold appropriate current drivers licences and endorsements appropriate to the work to be performed.
- (ii) Works crew operations - employees engaged in the management and maintenance of crown lands, parks and reserves
  - (1) Level 1 -Trainee

Includes any employee engaged in general duties that require only basic skills.
  - (2) Level 2 - Operator
    - (A) Includes any employee undergoing training in all facets of the works crew operations.
    - (B) To be promoted/advanced to level 3 on completion of training and/or on the recommendation of the Supervisor.
    - (C) Employees will receive basic training including both induction and work related training. This will encompass all facets of works crew operations including:

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- parks and reserves operations;
  - track, minor road and culvert construction and maintenance;
  - stock and weed control;
  - clearing;
  - rehabilitation;
  - training in the correct use of tools, equipment and safe working practices.
- (D) This level includes employees who are undergoing training primarily in track construction.
- (3) Level 3 - Advanced operator
- (A) An employee at this level will work under general supervision, will be skilled and experienced in all aspects of works crew operations and shall where required hold all the appropriate licences for the operation of equipment including:
- tractor;
  - truck;
  - light vehicles;
  - small boats;
  - chainsaw;
  - tree felling operations.
- (B) The employee will:
- understand and apply operational requirements of departmental policies for the management of crown lands, reserves and parks;
  - maintain tools and equipment and implement daily routine maintenance procedures;
  - comply with safe working practices.
- (C) This level is for experienced employees and includes those who are primarily engaged on track construction.

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(4) Level 4 - Supervisor

- (A) An employee at this level will, under limited supervision, supervise staff and/or contractors engaged on a variety of routine manual tasks or a number of work teams.
- (B) Within established policy and practice, the employee exercises independent judgment in deciding how tasks are to be performed and has authority to adopt work methods in dealing with non-standard problems.
- (C) The employee:
  - engages contractors as required;
  - applies departmental policy in regard to crown reserves etc;
  - applies quality control techniques to the work and the work of other employees;
  - exercises good communication and interpersonal skills;
  - is responsible for working within given project budgets;
  - handles day-to-day project administrative requirements;
  - ensures compliance with safe working practices.

(b) Department of Primary Industries, Water and Environment

(i) Research farms

(1) Level 1 - Trainee

- (A) An employee at this level will have no previous experience in farm tasks.
- (B) An entry level employee will be required to participate in structured induction training which will include units of competency in respect of the following:
  - general occupational health and safety;
  - site familiarisation;
  - communication;
  - legal responsibility with regard to the general public.

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(C) An employee at this level will work under direct and constant supervision and will only be required to perform basic labouring tasks.

(2) Level 2 - Farm operative

(A) An employee at this level will have a basic understanding of the work to be performed at a farm and will work under regular general supervision.

(B) An employee at this level will be required to perform routine manual tasks, operate basic equipment requiring previous training or experience, and exercise minimal judgment in deciding how tasks are to be performed.

(C) An employee at this level will be required to undertake:

- basic farming including but not limited to:
  - cultivation and seed bed preparation;
  - sowing of crops and pastures;
  - spraying to control weeds and pests;
  - fertiliser spreading;
  - irrigation of crops;
  - harvesting;
  - hay making;
  - fencing;
  - feeding stock;
  - routine/general stock work;
  - lambing/calving;
  - marking/drenching;
  - milking;
  - crutching;
  - seed cleaning.

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- the operation of equipment including but not limited to:
  - chainsaw;
  - milking machine;
  - hand-held power tools;
  - welders;
  - workshop equipment;
  - brush cutter;
  - rotary hoe.
- the operation of plant including but not limited to:
  - utility or flat tray;
  - farm bikes;
  - farm tractors (wheeled or crawlers);
  - hay balers;
  - rakers (and other farm machinery).
- to assist senior officers in a broad range of functions including but not limited to:
  - the maintenance of machinery, buildings, plant equipment and facilities etc;
  - farm agronomic tasks such as cultivation, fertiliser spreading, planting etc.

## **2. RATES OF PAY**

### Rates of Pay

All employees for who are assigned a classification in accordance with the Classification Descriptors at Clause 1 shall be paid the respective weekly total wage as expressed in the tables below:

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(a) Department of Tourism, Parks, Heritage and the Arts

(i) Royal Tasmanian Botanical Gardens

	Rate of Pay Per week		
	Base rate (NWC 91)	Safety Net Adjustment	Total Wage
	\$	\$	\$
Level 1 - Trainee	389.70	179.00	568.70
Level 2 - Trades assistant	420.60	181.00	601.60
Level 3 - Advanced trades assistant	446.70	181.00	627.70
Level 4 - Tradesperson	468.60	179.00	647.60
Level 5 - Advanced tradesperson	542.00	179.00	721.00

(ii) Works crew operations - Crown lands, parks and reserves

Level 1 - Trainee	332.60	179.00	511.60
Level 2 - Operator	413.20	179.00	592.20
Level 3 - Advanced operator	444.90	181.00	625.90
Level 4 - Supervisor	566.00	179.00	745.00

(b) Department of Primary Industries, Water and Environment

(i) Research farms

Level 1 - Trainee	331.70	179.00	510.70
Level 2 - Farm operative	405.00	179.00	584.00

### **3. MINIMUM WAGE**

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by Clause 4 - Supported Wage System is \$504.40 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)



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(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 sub clause (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 sub clause (b)(i)

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(i) applies to all work in ordinary hours;

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

(iii) is inclusive of the arbitrated safety net adjustment provided by the July 2006 State Wage Case Decision (T12395 of 2005) and all previous safety net and state wage case adjustments.

#### **4. SUPPORTED WAGE**

(a) This clause defines the conditions that will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:

(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, as documented in Supported Wage System: Guidelines and Assessment Process.

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- (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 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.
- (b) Eligibility Criteria
- (i) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria test for receipt of a disability support pension.
  - (ii) This clause 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 employment.
  - (iii) The clause also does not apply to the employer in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Service Act 1986* and fulfils the dual role of service provider and sheltered employer to employees 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 that Act, or if a part only has received recognition, that part.
- (c) Supported Wage Rates
- (i) Employees to whom this clause applies will be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work that the employee is performing according to the following schedule:

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

- (ii) Provided that the minimum amount payable will be not less than \$61.00 per week.
- (iii) Where a person's assessed capacity is 10%, they will receive a high degree of assistance and support.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to an 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 the employee organisation 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 clause, including the appropriate percentage of the award wage to be paid to the employee, will be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments will be agreed and signed by the parties to the assessment, provided that where the employee organisation which is party to the award, is not a party to the assessment, it will be referred by the Registrar to the employee organisation by certified mail and will take effect unless an objection is notified to the Registrar within 10 working days.

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(f) Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review will 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 will apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro rata basis.

(h) Workplace Adjustment

The employer wishing to employ a person under the provisions of this clause will 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, the employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
- (iii) The minimum amount payable to the employee during the trial period will be no less than \$61.00 per week.
- (iv) Work trials should include induction or training as appropriate to the job being trialled.
- (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 will be entered into based on the outcome of assessment under (d).

**5. MORE RESPONSIBLE DUTIES ALLOWANCE**

- (a) Where for a period of five days or more an employee (other than a fixed term employee or casual employee) is required to perform more responsible duties the employer shall authorise payment of a more responsible duties allowance.

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- (b) The allowance shall be established by reference to the value of the more responsible duties involved.
- (c) Where an employee in receipt of an allowance under this clause proceeds on approved paid leave, sick leave or leave in lieu of overtime, the employee will continue to receive the allowance provided that the duties continue after the period of such leave.
- (d) Payment for overtime shall be at the classification rate inclusive of the allowance.

## **6. OCCUPATIONAL SUPERANNUATION**

The employer will make a salary contribution equivalent of at least 9% of the normal salary rate of an employee into a complying superannuation fund that is nominated by the employee. The rate and manner of contribution, and the fund nominated shall comply with the Superannuation Guarantee Legislation as amended from time to time.

## **7. PAYMENT OF WAGES**

- (a) Period of payment

Wages will be paid fortnightly according to the actual ordinary hours worked each fortnight or the average number of ordinary hours worked each fortnight.

- (b) Method of payment

Wages will be paid by electronic funds transfer into an account nominated by the employee.

- (c) Time of payment

- (i) Salaries and wages shall be paid to an employee not later than the usual time the employee ceases work on the same day each fortnight, except where such day falls on a holiday specified in Part VI, Clause 7 - Holidays with Pay, in which case payment shall be made on the previous working day.
- (ii) Where the provisions of (c)(i) have not been met an employee shall notify the pay office of his or her agency as soon as practicable.
- (iii) Where employees are not paid by the end of working hours on the nominated pay day they will be entitled to be paid waiting time at ordinary rates up to 7.6 hours per day seven days per week for the time that they have to wait for payment.

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(iv) Despite (iii), if because of circumstances beyond the reasonable control of the employer (the onus of proof resting with the employer) wages cannot be paid, the employer will only be bound to pay the employees at the earliest reasonable time.

(d) Payslip details

An employee shall be provided with a payslip giving details of gross and net pay due, together with details of hours, allowances, overtime and any deductions made by the employer.

(e) Payment of wages on termination of employment

(i) On termination of employment, all monies due to an employee under this award will be paid on the day of termination.

(ii) Where it is not possible to pay an employee all monies due on the day of termination, the employer will make this payment within two clear working days of the termination.

(iii) If monies payable to an employee are not paid within the time specified in (ii), any time spent waiting for payment after the date of termination will be paid at ordinary rates at 7.6 hours per day up to a maximum of one week's pay.

#### **PART IV - ALLOWANCES AND SPECIAL RATES**

##### **1. EXCESS TRAVELLING TIME**

(a) Subject to (b), where the employer requires an employee to temporarily travel to a work location different to their normal location and present themselves at the usual starting time, the time which is in excess of the time normally spent travelling from the employee's principal residence to their fixed location will be compensated in accordance with the overtime provisions of this award.

(b) Where the employer requires a person to camp at a distance no greater than their normal travelling time as prescribed in (a), a payment for fares under (a) is not applicable.

##### **2. MEAL ALLOWANCES - TRAVELLING**

The employer may require an employee to work at a location other than their normal location in which case:

(a) where an employee is required to travel during the normal spread of hours, the employee will receive no additional payments;

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(b) where the employee is required by the employer to travel one and a half hours before or one and a half hours after the normal spread of hours, the employee will receive a payment for meals as follows:

- Breakfast - \$9.30;
- Lunch - \$10.25;
- Dinner - \$18.10.

### **3. KILOMETREAGE ALLOWANCE - (OCCASIONAL USER CATEGORY)**

(a) Where the employer requires an employee to use their own vehicle for the purpose of the employer, the employee will be paid a kilometreage allowance as follows:

Annual kilometreage travelled on duty in a financial year	Cents per kilometre	
	Rate 1 (2 litres and above)	Rate 2 (Less than 2 litres)
First 10,000 kilometres	67.80	58.31
Any additional kilometres	35.93	31.19

(b) The rates shall be varied upon application subsequent to 30 March and 30 September of each year after the Hobart Transportation, Private Motoring subgroup, Consumer Price Index Numbers for the quarters ending 30 March and 30 September respectively, become available.

(c) Unless otherwise directed by the employer, kilometreage on duty shall be the distance travelled from an employee's place of employment to his or her destination and return to his or her place of employment.

### **4. ACCOMMODATION**

(a) Accommodation - Employer Directed - Other Than Camping

An employee who on any day or from day to day is required to remain away from their principal residence overnight, whether intrastate or interstate, shall, where directed, stay at employer provided accommodation at no cost to the employee and in which case the provisions of (b) and (c) shall not apply.

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(b) Accommodation - Intrastate - Employee Choice

When intrastate, staying in a accommodation of the employee’s choice, the employee will receive an overnight absence from normal place of residence payment of \$91.70 in addition, as applicable, to payments prescribed at (d) and (e).

(c) Accommodation - Interstate - Employee Choice

(i) When interstate, staying in a accommodation of the employee’s choice, the employee will receive an overnight absence from normal place of residence payment as set out in (c)(ii) in addition, as applicable, to payments prescribed at (d) and (e).

(ii) Component

	Interstate \$	Sydney \$
Overnight absence from normal place of residence	128.10	149.60

(iii) Notwithstanding the allowances specified in (b) and (c)(ii), where the employer is satisfied that no reasonable alternative accommodation is available, the employee may be reimbursed for actual expenses incurred.

(d) Accommodation - telephone and dry cleaning expenses

Pursuant to (a), whether intrastate or interstate, where employer provided or nominated accommodation is utilised and meals are provided, all at no cost to the employee, the employee will receive reimbursement of reasonable expenses incurred by the employee in respect of the following:

- (i) a telephone call to an employee’s spouse or children each 24 hours;
- (ii) dry cleaning or laundry required as a result of an extended absence.

(e) Pursuant to (a), whether intrastate or interstate, where employer provided or nominated accommodation is utilised at no cost to the employee but meals are not provided, or, pursuant to (b) or (c), the employee will receive payment as follows:



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Component	\$
Breakfast (preceding or following an overnight absence) Applicable hours, 7.00am – 8.30am.	15.00
Lunch (preceding or following an overnight absence) Applicable hours, 12.30pm – 2.00pm.	13.35
Dinner (preceding or following an overnight absence) Applicable hours, 6.00pm – 7.30pm.	28.60
(f) Accommodation - Camping	
(i) When it is impracticable for the employer to provide huts or cubicles due to the nature or the locality of the camp, or the short duration of the work necessitating its establishment, the employer may in such circumstances provide tents with tent poles and suitable board floors.	
(ii) Where employees are camped, the employer as far as practicable shall provide adequate sleeping, ablution and messing facilities.	
(iii) An employee required to camp in huts, cubicles, or tents shall receive a payment of \$22.10 per working day.	
(g) Accommodation - Camping – General Provisions	
Payment for camping prescribed at (f)(iii) covers the disabilities of living in the camp, the cost of food and incidentals, and any travel costs at the weekend by persons travelling away from camp to their homes and return. All payments are on an actual basis and all time spent out of the camp for reasons other than those accepted by the employer will be without payment of the allowance.	
(h) Accommodation - Employer Directed - Bushfire Fighting	
Pursuant to (a), an employee engaged in bushfire fighting who is required to stay at employer provided accommodation at no cost to the employee, shall receive a payment of \$22.10 per working day.	

## **5. FIRST AID ALLOWANCE**

- (a) An employee appointed by the employer to perform first aid duties and who is the current holder of a St John Ambulance First Aid Certificate, or an equivalent certificate, shall be paid an allowance of \$574.00 per annum.

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- (b) The provisions of (a) will not apply and shall have no application to an employee where the requirement to possess a first aid certificate is part of the employee's normal employment.
- (c) Where the employer requires an employee to obtain a first aid qualification, the employer shall pay all costs associated with and, where necessary, shall provide paid time off for the purpose of undertaking first aid training leading to an appropriate first aid qualification such as a certificate from St John Ambulance.
- (d) An employee appointed to perform first aid duties shall be allowed to undertake refresher courses as in (c), provided that the employer still requires the employee to perform such duties.

## **6. UNIFORMS**

- (a) The employer shall reimburse an employee for the purchase of sufficient and serviceable uniforms, the wearing of which is designated by the employer as necessary and required in the employee's employment.
- (b) The provisions of (a) do not apply in circumstances where the necessary and required uniform is provided to the employee, by the employer, free of charge.
- (c) The provisions of (a) or (b) apply relevantly to the purchase or provision of replacement uniforms which shall occur on a fair wear and tear basis.
- (d) An employee, on leaving employment with the employer, shall return any uniform or any part thereof to the employer.

## **7. FOOTWEAR, PROTECTIVE CLOTHING AND EQUIPMENT**

- (a) Subject to (l)(b), the employer shall reimburse an employee for the purchase of any footwear and/or protective clothing and/or equipment that are designated by the employer as necessary and required in the employee's employment.
- (b) The provisions of (a) do not apply in circumstances where the necessary and required footwear and/or protective clothing and/or equipment are provided to the employee, by the employer, free of charge.
- (c) The provisions of (a) or (b) apply relevantly to the purchase or provision of replacement footwear and/or protective clothing and/or equipment which shall occur on a fair wear and tear basis.
- (d) An employee, on leaving employment with the employer, shall return any protective clothing and/or equipment or any part thereof to the employer.

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## **8. TOOLS**

- (a) The employer shall reimburse an employee for the purchase of any tools which are designated by the employer as necessary and required in the employee's employment
- (b) The provisions of (a) do not apply in circumstances where the necessary and required tools are provided to the employee, by the employer, free of charge.
- (c) The provisions of (a) or (b) apply relevantly to the purchase or provision of tools which shall occur on a fair wear and tear basis.
- (d) An employee, on leaving employment with the employer, shall return any tools or any part thereof to the employer.

## **9. COMPENSATION FOR DAMAGE TO CLOTHING, SPECTACLES, HEARING AIDS AND TOOLS**

Compensation must be made to the extent of the damage sustained where, in the course of the work, clothing, spectacles, hearing aids or tools of trade are damaged or destroyed by fire or through the use of corrosive substances. The employer's liability in respect of tools is limited to the tools of trade which are ordinarily required for the performance of the employee's duties. Compensation is not payable if an employee is entitled to workers' compensation in respect of the damage.

## **10. CLOTHING AND FOOTWEAR ALLOWANCE FOR CASUAL EMPLOYEES ENGAGED IN BUSHFIRE FIGHTING**

- (a) Casual employees who commence fire duty in any one year shall be compensated for accelerated wear and tear on footwear and clothing and shall be reimbursed an amount of \$8.45 per day to a maximum of \$85.25 per annum.
- (b) The amounts prescribed in (a) are not payable to employees who are supplied with safety footwear and protective clothing free of charge.
- (c) Where one of the above items are provided the amount payable shall be halved.

## **11. SPECIAL RATES**

- (a) The following special rates shall be paid as prescribed irrespective of the times at which the work is being performed and shall not be subject to any premium or penalty addition.
- (b) Subject to (c), where more than one of the disabilities set out in sub clauses (i) or (ii) occur only one rate, namely the highest rate for the applicable disabilities shall apply.

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(c) This does not apply in relation to sub clause (iv), the rate for which is cumulative.

(i) Toxic Substances

(1) Employees using toxic substances or materials of a like nature shall be paid 46 cents per hour extra. Employees working in the same enclosed area or, if in an open area, in close proximity to employees so engaged shall be paid 37 cents per hour extra.

(2) For the purposes of this subclause, toxic substances shall include epoxy-based materials and all materials that include or require the addition of a catalyst hardener and reactive additives or two-pack catalyst system shall be deemed to be toxic materials.

(ii) Epoxy or Two-Part Polyester Resins

(1) On any day or shift when a roadmarker unit is required to use an epoxy or two-part polyester resin in roadmarking operations, each member of the unit shall be paid an allowance of 37 cents per hour or part thereof for the whole day or shift.

(2) On any day or shift when a unit is not engaged on roadmarking operations, and one or more members of that unit are required to do maintenance work on equipment affected by or containing unmixed epoxy or two part polyester resin components, each member of the unit shall be paid an allowance of 37 cents for each hour or part thereof that he or she is so engaged.

(iii) Powdered Lime Dust

Each employee exposed to powdered lime dust whilst engaged in spreading or mixing powdered lime shall, during the time he or she is so exposed, be paid 37 cents for each hour or part thereof that he or she is so engaged.

(iv) Wet Work

An employee working in a wet place, which means a place where water other than rain is continually dripping from overhead so as to saturate the clothing of an employee if unprotected, or when the water in the place where the employee is standing is over 2.5 centimetres deep, shall be paid an additional 37 cents per hour or part thereof.

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## **PART V - HOURS OF WORK, SHIFT WORK, MEAL BREAKS AND OVERTIME**

### **1. WORKING HOURS - DAY WORK**

(a) Ordinary hours of work

- (i) Except as provided elsewhere in this award, the ordinary hours of work are 7.6 hours per day worked between the hours of 7.00 a.m. and 6.00 p.m. each Monday to Friday and totalling 38 hours per week.
- (ii) Provided that the spread of hours, 7.00 a.m. to 6.00 p.m., may be varied to an equivalent spread by agreement between the employer and employees.

(b) Nine day fortnight

Provided that the ordinary hours of work for employees currently working a nine day fortnight shall be an average of 38 hours per week to be worked Monday to Friday (between the hours of 6.00 a.m. and 6.00 p.m.), and shall be of 8.5 hours duration each day, Monday to Thursday, with every second Friday off. Every other Friday consists of eight hours duration.

(c) Nineteen day month

- (i) The ordinary working hours shall be 38 per week worked as a 20 day four-week cycle of eight hours each on Monday to Friday inclusive, between the hours of 7.00 a.m. and 6.00 p.m., with 0.4 of one hour of each day worked accruing as an entitlement in each cycle as a day off paid for as though worked.
- (ii) Provided that by agreement in writing between the employer and the employees an alternate day in the four-week cycle may be substituted for the nominated day as the day off paid as though worked, and where such agreement is reached all provisions of the award shall apply as if such day was the prescribed day.
- (iii) Where special circumstances exist the employer and the majority of employees at the affected worksite agree that it is not practicable for the four-week cycle in (c)(i) to operate, then agreement may be reached between the employer and the employees on another method of arranging working hours so that the average ordinary hours worked in any one week do not exceed 38.
- (iv) Each day of paid leave taken and any holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.

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- (v) An employee who has not worked, or is not regarded by reason of (c)(iv) as having worked, a complete 20 day four-week cycle shall receive pro rata accrued entitlements for each day worked or regarded as having been worked in such cycle, payable for the rostered day off or, in the case of termination of employment, on termination.
- (d) Rostered days off
  - (i) Where rostered days are not taken as part of a four-week cycle they are accumulated up to a total of five days in any one year. The accumulation and/or taking of days so accrued is to be subject to the agreement of the employer and employees. Any variation to this may only occur when improved productivity can be demonstrated.
  - (ii) Where an agreed rostered day prescribed by (d)(i) falls on a holiday with pay as prescribed in Part VI, Clause 7 - Holidays with Pay, the next working day shall be taken in lieu of the rostered day off unless an alternate day in that four-week cycle or in the next cycle is agreed in writing between the employer and the employee.
- (e) Working on rostered day off

The accrued day off prescribed in (c)(i) or (d)(i), may be worked where it is required by the employer and such work is necessary to allow other employees to be employed productively, or to carry out out-of-hours maintenance, or because of unforeseen delays to a particular project or a section of it, or for other reasons arising from unforeseen or emergency circumstances in which case, in addition to accrued entitlements, the employee shall be paid at overtime rates in accordance with the overtime provisions at Part V, Clause 5 - Overtime.
- (f) Early start
  - (i) Where it is agreed between the employer and employees the working day may begin at 6.00 a.m., or at any other time between that hour and 8.00 a.m., and the working time shall then begin to run from the time so fixed. In these circumstances the time of observing the normal meal break shall be agreed between the employer and employees.
  - (ii) Where special circumstances exist and a majority of employees desire to work longer hours on any day they may, subject to the consent of the employer, be permitted to do so without payment of any penalty rate, provided that the longer hours so worked do not exceed two on any one day.
  - (iii) The provisions of this clause shall not apply to employees engaged in the work of fighting bushfires.

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(g) Hours agreement

Where an hours agreement has been negotiated between the employer and employees to apply to all or part of the employer's work force covered by this award, that hours agreement shall, where inconsistent with any other provision of this clause, prevail for the employees concerned.

**2. WORKING HOURS - SHIFT WORK**

(a) Application of this clause

Should there be any inconsistency between this clause and any other clauses in this award, the provisions of this clause take precedence in respect of employers engaged on shift work.

(b) Definitions - shift work

- (i) Day shift means any shift starting at or after 6.00 a.m. and before 10.00 a.m.
- (ii) Afternoon shift means any shift starting at or after 10.00 a.m. and before 8.00 p.m.
- (iii) Night shift means any shift starting at or after 8.00 p.m. and before 6.00 a.m.
- (iv) Rostered shift means a shift on which the employee concerned has had at least 48 hours' notice.
- (v) Seven day shift worker means a shift worker regularly rostered for duty in accordance with a roster covering each day of the week.

(c) Ordinary working hours

- (i) The ordinary working hours of employees on shift work shall not exceed an average of 38 per week spread over a period of two, three or four weeks, to be worked in shifts of eight hours, inclusive of a meal break of 30 minutes, which shall be counted as time worked.
- (ii) The ordinary working hours can be averaged out over the cycle of the roster.

(d) Roster of shifts

- (i) There shall be a roster of shifts that shall provide for rotation unless all of the employees concerned desire otherwise.
- (ii) Shifts shall be worked according to such roster.

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(e) Nineteen Day month

- (i) Where employees on shift work are working the 38 hour week as a 20 day cycle with one rostered day off per cycle, they shall accrue 0.4 of one hour for each eight hour shift worked to allow one complete shift to be taken off as paid shift for every 20 shift cycle.
- (ii) The 20th shift shall be paid for at the appropriate shift rate as prescribed by this clause and any appropriate allowance as prescribed in Part III - Allowances and Special Rates.

(f) Holiday and leave adjustment

Each day of paid leave taken and any public holiday occurring during any cycle of four weeks shall be regarded as a shift worked for accrual purposes.

(g) Pro rata accrued entitlements

Employees not working a complete four weeks' cycle shall be paid accrued pro rata accrual entitlements for each shift worked.

(h) Accrued entitlements on termination

An employee shall be paid his or her accrued entitlements on termination.

(i) Rostered days off

- (i) The employer and employees shall agree in writing upon arrangements for rostered paid days off or for accumulation of accrued days.
- (ii) Accumulation of accrued days in (i) shall be limited to no more than five days before they are taken as paid days off.
- (iii) By agreement between the employer and employees, more than five days may be accumulated.
- (iv) Accrued days, when taken, shall be regarded as days worked for accrual purposes in the particular 20 shift cycle.
- (v) Once such days have been rostered, they shall be taken as paid days off.

(j) Working on rostered day off

Where the employer, for emergency reasons, requires an employee to work on his or her rostered day off, he or she shall be paid in addition to his or her accrued entitlement the penalty rates prescribed in Part V, Clause 5(d)(ii) – Call Out.



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(k) Transport after shift work

- (i) Subject to (ii), when an employee, after having worked a shift for which he or she has not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer shall provide him or her with transport to his or her home or to the nearest appropriate public transport.
- (ii) The provisions of (i) shall only have application when the employer has given less than 24 hours' notice of the requirement to work overtime on such shift.

(l) Shift loadings

- (i) A shift worker whilst on afternoon or night shift other than a Saturday, Sunday or holiday shall be paid for such shift 15% more than his or her ordinary rate.
- (ii) Where a shift worker is required to work on any afternoon or nightshift which does not provide for at least five successive afternoons or nights he or she shall be paid at the rate of time and a half.
- (iii) An employee who, except at his or her own request pursuant to (iii)(3):
  - (1) during a period of engagement on shift, works night shift only; or
  - (2) remains on a night shift for a longer period than four successive 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 or her at least 1/3 of his or her working time off night shift in each cycle,
  - (4) shall during such engagement, period or cycle be paid 30% more than his or her ordinary rate for all time worked during ordinary working hours inclusive of time worked for accrual purposes as prescribed in Clause 1(c)(i) on such night shift.

(m) Payment for weekend shift work

A shift worker shall be paid at the minimum rate of time and a half for ordinary hours of work (including time worked for accrual purposes) between midnight Friday and midnight Saturday.

(n) Sundays and public holidays

- (i) Subject to this clause, Part V, Clause 5 - Overtime and Part VI, Clause 7 - Holidays with Pay apply to shift workers.

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- (ii) Where shifts commence between 11.00 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.
  - (iii) The time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday. Where a shift falls partly on a Sunday or a holiday, that shift the portion of which falls on a Sunday or a holiday, shall be regarded as the Sunday or holiday shift.
  - (iv) All work performed on a Sunday and holiday specified in Part VI, Clause 7 - Holidays with Pay, on a rostered shift shall be at the rate of double time.
- (o) Shift work penalty
- (i) Subject to (ii) and (iii), where an employee is required by the employer to change from their normal shift roster and they have been given less than 48 hours notice of the change, they will be paid at the rate of double time for each hour worked until 48 hours has elapsed.
  - (ii) Where an employee requests to work out of rotation of the shift roster the provisions of (i) shall not apply.
  - (iii) To be entitled to the penalty payment prescribed at (i), the employee must work the major portion of hours of a shift in the period detailed in (b)(i) to (b)(iv) inclusive.

(p) Remaining on duty

If an employee of the oncoming shift fails to attend, an employee in the shift on duty may be required to remain on duty until relief is organised.

(q) Hours agreement

Where an hours agreement has been negotiated between the employer and the employees to apply to all or part of the employer's work force covered by this award, that hours agreement shall, where inconsistent with any other provision of this clause, prevail for the employees concerned.

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### **3. BUSHFIRE FIGHTING**

Upon the outbreak of a bushfire the terms and conditions of employment provided in this clause will apply to employees employed on fire protection duties.

(a) Retention of classification

An employee shall retain the classification held immediately prior to the outbreak of a bushfire, unless during the period of the fire the employer assigns an employee a higher classification.

PROVIDED that where an employee performs the role of a section leader in fire fighting operations that employee shall be paid for such time so worked at the level 4 Supervisors rate in Part III - HOURS OF WORK, SHIFT WORK, MEAL BREAKS AND OVERTIME, Clause 2 (a)(ii).

PROVIDED FURTHER that there shall be a minimum payment of 4 hours on each such occasion.

(b) Normal hours of work

The weekly total of hours at ordinary time shall not exceed 38 per week, to be worked in accordance with the normal accrual provisions.

(c) Work periods

The minimum work period, except as provided by clauses (i) and (j), shall be eight consecutive hours inclusive of time worked for normal accrual purposes. A work period can only be terminated by a rest period of a minimum of eight hours.

(d) Rest period

(i) An employee shall receive a rest period of at least eight hours between successive work periods.

(ii) If a rest period exceeds 16 hours, a new work period shall be deemed to commence.

(iii) Paid rest period

(1) If a work period exceeds 16 hours, an employee shall, at the conclusion of such work period, receive a rest period of at least eight hours duration, and shall, in respect of such rest period, be paid eight hours at ordinary rates.

(2) After eight hours of any paid rest period a new work period shall be deemed to commence.

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(e) Meal Intervals

Meal intervals shall not exceed 45 minutes and shall be counted as time worked.

(f) Monday to Friday payment

(i) All time worked on any Monday to Friday (including time worked prior to fire fighting work) shall be paid for:

- (1) at the rate of ordinary time for the first eight hours; and
- (2) at the rate of time and one half for the next two hours; and
- (3) at the rate of double time thereafter.

(ii) Provided that the wage rate shall revert to ordinary time when the employee has received a rest period of eight hours.

(iii) Provided further that when penalty rates are being paid, and a work period extends beyond midnight, such penalty rates shall continue until the end of the work period.

(g) Saturday Work

Except where the provisions of (f)(iii) apply, all time worked by an employee on a Saturday shall be paid for:

- (i) at the rate of time and one half for the first two hours; and
- (ii) at the rate of double time thereafter.

(h) Sunday and State Service Holiday work

(i) All time worked by an employee on a Sunday shall be paid for at double the ordinary prescribed rate.

(ii) For all time worked on a holiday as prescribed in Part VI, Clause 7 – Holidays with Pay, at the rate of two and one half times the ordinary prescribed rate.

(i) Stand-by

(i) Stand-by shall mean all time during which an employee is required to be available for an immediate call to work.

(ii) An employee on stand-by shall be available either at home or at such other place as is mutually agreed with the employer.

(iii) Stand-by payment shall be at the rate of 60% of the employee's ordinary hourly rate.

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- (iv) Stand-by for employees on Saturdays, Sundays and public holidays shall mean the eight hour period between 10.00 a.m. - 6.00 p.m. Provided that by agreement between the employer and employees, this period may be varied to conclude no later than 8.00 p.m.
  - (v) An employee who is rostered to stand-by on a Saturday, Sunday or holiday with pay as specified in Part VI, Clause 7 - Holidays with Pay, shall be entitled to eight hours' stand-by payment for each day so rostered.
  - (vi) Employees shall be entitled to only eight hours stand-by pay if, by 5.00 p.m. on their last normal working day preceding a weekend, they are notified that stand-by for that weekend has been cancelled.
  - (vii) During the period from 1 November to 30 April the employer may, on any normal weekday that has a high fire danger rating, place an employee on stand-by at the cessation of the normal working time for the day and/or the departure from the place where normally work ceases for the day.
  - (viii) If the employer pays an employee on stand-by pursuant to (vii), payment for stand-by shall be made from the normal time of cessation of work at the rate as provided in (iii).
  - (ix) Where employees are called upon to perform fire fighting work on any day that they are on stand-by, they shall, in addition to their entitlements under clause (j), be paid for all stand-by performed on that day.
- (j) Call Outs
- (i) An employee recalled to perform work in or in connection with bushfire fighting shall be paid for a minimum of four hours work at the appropriate wage rate each time they are recalled.
  - (ii) Provided that the employee shall not be required to work the full four hours if the job for which recall has occurred is completed in a shorter period.
  - (iii) Provided further, that if such work continues for more than four hours the employee shall be entitled to payment for a minimum work period of eight consecutive hours.
- (k) Travelling Time
- (i) All time spent by an employee in proceeding to and from a bushfire at the direction of the employer shall be deemed to be time worked.
  - (ii) Payment shall commence from, and cease at, the employer's depot, camp or normal pick-up place in the home district.

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(l) Resumption of Normal Duties

- (i) Subject to (iii), each employee who has been engaged in fire fighting work shall be entitled, upon the cessation of such work and prior to the resumption of normal duties, to a clear break of ten hours without loss of pay for recognised working time occurring during such break.
- (ii) Subject to (iii), an employee who has been camped out for at least three nights shall be entitled to the provisions of (i) as if 12 hours were substituted for ten hours.
- (iii) Provided that the provisions of (i) or (ii) shall not apply with respect to any fire fighting operations commenced and completed between the hours of 7.00 a.m. and 5.00 p.m. on the same day or such other hours as varied.

(m) Provision of Meals

- (i) The employer shall provide the usual three meals per day.
- (ii) Provided that, where an employee is required to work at night, the employer shall provide suitable provisions at reasonable intervals.
- (iii) All food supplied by the employer under (i) and (ii) shall be free of charge.

(n) Uniforms, Footwear, Protective Clothing, Equipment and Tools

Reimbursement or supply of uniforms, footwear, protective clothing, equipment and tools to employees engaged on bushfire fighting duties shall be in accordance with the provisions of Part IV, Clause 7 – Footwear, Protective Clothing and Equipment.

**4. MEAL BREAKS, ALLOWANCES AND REST PAUSES**

(a) Meal breaks

(i) Day workers

- (1) Work will cease between 12.00 Noon and 2.00 p.m. Monday to Friday for the purpose of taking an unpaid meal break of not less than 45 minutes.
- (2) By agreement between the employer and the majority of employees, the meal break may be shortened to 30 minutes with a consequential adjustment to the daily time of ceasing work.

(ii) Shift workers

The relevant provisions for shift workers are set out in (a)(iii).

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(iii) Delayed Meal Break - Day Workers

Where an employee does not complete the meal break within the time prescribed in this clause as a result of having been required to continue working and thereby deferring the meal interval, the employee will be paid at the rate of time and one half for the first half hour and double time thereafter for all time elapsing between the time at which the meal is customarily taken and the time the meal interval is commenced.

(b) Rest Break on Overtime

(i) Where an employee is required to work overtime before or after the usual commencing or ceasing time on any day or shift for 1-1/2 hours or more, that employee will be allowed a rest break of 20 minutes immediately before such commencing time or after such ceasing time. The rest break will be paid at ordinary rates.

(ii) The employer and employee may agree to any variation of (a)(iii), to meet the circumstances of the work in hand, but no payment for any time allowed in excess of 20 minutes will be required.

(iii) Thereafter, after each four hours of continuous overtime work, the employee will be allowed a rest break of 20 minutes without deduction of pay, if the employee continues work after the rest break.

(iv) For the purpose of this subclause, the usual commencing and ceasing time is at the start or end of ordinary hours inclusive of time worked for accrual purposes.

(c) Rest Pause on a Saturday, Sunday or Holiday with Pay

(i) An employee working on a Saturday, Sunday or holiday will be allowed a paid rest break of 20 minutes duration at the appropriate rate after each four hours of work if the employee continues work after the rest break.

(ii) Where an employee is required to work on a Saturday, the first rest break will, if occurring between 10.00 a.m. and 1.00 p.m., be paid at ordinary rates.

(iii) The employer and employee may agree to any variation of (i) to meet the circumstances of the work in hand, but no payment for any time agreed in excess of 20 minutes will be required.

## **5. OVERTIME**

(a) All employees

(i) Subject to (ii), an employee may be required to work reasonable overtime at overtime rates.

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- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
    - (1) any risk to employee health and safety;
    - (2) the employee's personal circumstances including any family responsibilities;
    - (3) the needs of the workplace or enterprise;
    - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
    - (5) any other relevant matter.
  - (iii) No overtime shall be worked without the prior approval of the employer.
- (b) Day workers
- (i) Monday to Friday
- Except as otherwise provided, all time worked in excess of or outside the ordinary hours of work provided in Clause 1 - Working hours - Day Work, will be paid:
- (1) at one and one half times the ordinary rate for the first two hours; and
  - (2) at double the ordinary rate for all time thereafter, and such double time will continue until the completion of the overtime work.
- (ii) For the purpose of calculating overtime under this clause:
    - (1) the hourly rate is determined by dividing the weekly rate by 38;
    - (2) each day's work stands alone except where overtime is continuous with the previous day; and
    - (3) a day means all time between midnight on any one day and midnight on the succeeding day.
  - (iii) Weekend Work
    - (1) Overtime worked on a Saturday will be paid at time and one half for the first two hours and double time thereafter.
    - (2) All time worked on a Sunday will be paid at double time.



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- (3) An employee who works overtime on a Saturday or a Sunday will be provided with at least three hours work or be paid three hours pay.
- (iv) Holiday work
- (1) Overtime worked on a holiday specified in Part VI, Clause 7 - Holidays with Pay, will be paid at the rate of double time and one half.
  - (2) An employee required to work on a holiday specified in Part VI, Clause 7 - Holidays with pay, will be afforded at least four hours work or paid for four hours at the rate of double time and one half.
- (v) Call Out
- (1) Monday to Friday
    - (A) An employee called out to work Monday to Friday after leaving the workplace for the day will be paid a minimum of four hours work at the rate of time and one half for each time called out whether notified before or after leaving the workplace.
    - (B) Despite (1)(A), if required to work for two hours or more an employee will be paid for a minimum of four hours work calculated at time and one half for the first two hours and double time thereafter.
  - (2) Saturdays
    - (A) An employee called out to work on a Saturday will be paid for a minimum of three hours work at the rate of time and one half on each occasion called out.
    - (B) Despite (2)(A), an employee required to work for two hours or more will be paid for a minimum of three hours work at time and one half for the first two hours and double time thereafter.
  - (3) Sundays

An employee called out to work on a Sunday will be paid at double time for a minimum of three hours at the first call out, and for actual time worked at each subsequent call out.
  - (4) Holidays with Pay
    - (A) An employee called out to work on a holiday with pay as specified in Part VI, Clause 7 - Holidays with Pay, will be paid at double time and one half for a minimum of three hours at the first call out and for the actual time worked at each subsequent call out.

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(B) The provisions of this subclause do not apply in cases where the overtime is continuous, subject to meal breaks, with the completion or commencement of ordinary working time.

(vi) Ten-Hour Rest Break

(1) When overtime work is necessary it will, wherever practicable, be arranged so that employees have at least ten consecutive hours off duty between the work of successive days.

(2) An employee who works so much overtime that the employee does not have at least ten consecutive hours off duty:

(A) between the end of ordinary work on one day and the commencement of ordinary work on the next day; or

(B) between 4.00 p.m. on a Sunday, public holiday or rostered day off and the commencement of ordinary work on the next day, will be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(C) If, on the instructions of the employer, an employee resumes or continues to work without having had ten consecutive hours off duty, that employee will be paid at double time until released from duty for that period and is entitled to be absent until he or she has had ten consecutive hours off duty without loss of pay for ordinary working time that occurs during that absence.

(c) The provisions of this clause do not apply:

(i) to any employee during any period in which that employee is engaged in fighting bushfires, in which case the provisions of Clause 3 - Bushfire Fighting, apply; or

(ii) where overtime is worked in accordance with Clause 6 - Availability, where the actual time worked is less than three hours on each call out or on each of such call outs.

(d) Shift Worker

(i) Overtime rates

(1) Subject to (2), work done by shift workers in excess of or outside the ordinary working hours (inclusive of time worked for accrual purposes as prescribed in Part V, Clause 2 on a rostered shift or on a shift other than a rostered shift shall be paid at the rate of double time.

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- (2) Provided that the provision of (1) shall not apply to:
  - (A) arrangements between the employees themselves; or
  - (B) in cases due to rotation of shift; or
  - (C) when the relief does not come on duty at the proper time.
- (3) Subject to (4), for all time of duty after the employee has finished his or her ordinary shift, such unrelieved employee shall be paid at the rate of time and a half for the first eight hours and double time thereafter.
- (4) Provided that the provisions of (3) shall not apply where a rostered employee has notified the employer at least eight hours before the commencement of a shift of his or her inability to attend work. In such cases, if the employer requires the unrelieved employee to continue working past the finish of his or her ordinary shift, he or she shall be paid at the rate of double time.

(ii) Call Out

- (1) A shift worker called out to work after the expiration of his or her customary working time after he or she has left work for the shift, or called out to work on a day on which he or she is rostered off, shall be paid for a minimum of three hours work calculated at double the ordinary prescribed rate for each time he or she is called out.
- (2) Provided that if called out on a holiday prescribed in Part VI, Clause 7 - Holidays with Pay, payment shall be calculated at the rate of double time and a half.

(iii) Ten Hour Rest Break

The provisions (b)(vi) apply in the case of shift workers as if eight hours were substituted for ten hours when overtime is worked:

- (1) for the purpose of changing shift rosters; or
- (2) where a shift worker does not report for duty and a day worker or shift worker is required to replace such shift worker; or
- (3) where a shift is worked by arrangement between the employees themselves.

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(iv) Transport after Shift Work Overtime

When an employee works overtime on a shift for which that employee is not regularly rostered and finishes work at a time when reasonable means of transport are not available, the employer will provide that employee transport home or to the nearest public transport.

## **6 AVAILABILITY**

When the employer requires an employee to be available for return to work after normal working hours:

- (a) the employee, where practicable before finishing normal work, will be notified that they may be required to perform duties after normal working hours; and
- (b) an employee advised of the requirement to be available to return to work shall remain contactable and in close proximity to their normal residence and be ready and able for an immediate return to work.
- (c) Subject to (e), an employee on availability shall be entitled to the payment of an allowance at the rate of 85.98 cents per hour, with a minimum payment of \$10.80 per day.
- (d) The employer may direct an employee to monitor equipment and/or to attend to after hours calls.
- (e) The allowance prescribed in (c) is not payable on any day on which an employee, on availability, is actually called out and returns to the workplace or a place of work, in which circumstance the provisions of (f) shall apply.
- (f) Recall to Work Whilst on Availability
  - (i) An employee shall not refuse a reasonable request to return to work with or without prior notice if required by the employer.
  - (ii) Subject to (iii), an employee, whilst on availability, recalled to work overtime will be paid for a minimum of four hours at the rate of time and one half for the first three hours and double time thereafter.
  - (iii) Should a subsequent recall occur during the four hour spread for which the minimum payment prescribed in (ii) has been attracted, then no extra payment shall accrue until the time actually worked exceeds four hours.
  - (iv) Payment for recalls occurring outside the first minimum payment spread shall be calculated at the appropriate rate for actual time worked.
  - (v) Time reasonably spent travelling to and from work shall be regarded as time worked.

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- (vi) The employer may, where reasonably practicable, require the employee to undertake work to maintain services not associated with the cause for the return to work.
- (vii) Where in the normal operations of an area, or a position, routine return to work is required for the checking of equipment or machinery, security or caretaking, the provisions of this clause do not apply.

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

### **1. ANNUAL LEAVE**

#### (a) Leave Entitlement

- (i) An employee, other than a casual employee, who has been in the constant service of the employer for at least one year (less the period of annual leave), and who has not been absent from employment without leave will for each completed year of service be entitled to paid leave of absence for a period of 152 hours.
- (ii) An employee's leave entitlement will be in addition to any of the holidays specified in Clause 7 – Holidays with Pay.
- (iii) Where a rostered day off provided by Part V, Clause 1 - Working Hours - Day Work, or Clause 2 - Working Hours - Shift Work, falls during the period in which annual leave is taken, payment of accrued entitlements for that day will be made in addition to annual leave payment provided by this clause.

#### (b) Additional Leave Entitlement - Shift Workers

- (i) In addition to the leave prescribed in (a), shift workers who are rostered to work regularly on Sundays and holidays specified in Clause 7 – Holidays with Pay, shall be entitled to an additional 38 hours leave.
- (ii) Where an employee is engaged for part of a 12 month period as a seven day shift worker, he or she shall be entitled to have the period of annual leave prescribed in sub clause (b)(i) increased by 3.166 hours for each completed month that the employee is so engaged.

#### (c) Method of Taking Leave

- (i) Either 152 hours or two separate periods of not less than 38 hours, exclusive of holidays prescribed in Clause 7 – Holidays with Pay, will be given and taken within six months from the date when the right to annual leave accrued.
- (ii) Where an employee requests that leave be allowed in one continuous period, such a request shall not be unreasonably refused.

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- (iii) Annual leave may be taken, if agreed to by the employer and employee, in three separate periods, two of which shall not be less than seven consecutive calendar days and in all cases exclusive of any of the holidays specified in Clause 7 - Holidays with Pay, occurring therein.
  - (iv) In the circumstances where a holiday, as specified in Clause 7 – Holidays with Pay, falls within one day of a weekend or another holiday, the provisions of sub clause (c)(i) may be altered by agreement between the employer and a majority of employees to grant a day of annual leave on the day between the holidays and/or weekend.
  - (v) Where the leave is taken in more than one period the total entitlement shall not exceed the entitlement as if the annual leave was taken continuously.
- (d) Annual Close Down
- Where the employer elects to close down a section or sections of its operations during the Christmas/New Year period for the purpose of allowing annual leave the following provisions will apply:
- (i) The employer will endeavour to notify all employees concerned of the intention to close down their area of work by 30 September that year, or failing that, as soon as possible thereafter.
  - (ii) Such notification must specify the actual dates of close down.
  - (iii) Employees who do not have an entitlement to annual leave at that time will be granted their accrued entitlement existing at the date of the close down.
- (e) Leave Allowed Before Due Date
- (i) The employer may allow an employee to take annual leave either wholly or partly in advance. In such a case, a further period of annual leave will not commence to accrue until after the expiration of the 12 months in respect of which the annual leave or part of it had been taken before it accrued.
  - (ii) Where the employer has allowed an employee to take annual leave pursuant to sub clause (e)(i), and the employee's services are terminated (by whatsoever cause) prior to the employee completing the 12 months continuous service for which leave was allowed in advance, the employer may, for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/52nd of the amount of wages paid on account of the annual leave.

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(f) Notice of taking leave

An employee must give three weeks notice where practicable, when requesting annual leave. Subject to the provisions of sub clause (e), an employee making such application must have sufficient credits to cover the absence.

(g) Leave payment

If requested, each employee before going on leave will be paid in advance the wages that would ordinarily accrue during the currency of the leave.

(h) Annual leave loading

(i) General

- (1) An employee will be eligible for a leave loading payment after the first anniversary date of employment.
- (2) Part-time employees are entitled to payment of the leave loading in direct proportion that their weekly hours of work bear to 38.
- (3) the leave loading shall be paid on the first period of leave.

(ii) Day workers

In addition to the payment prescribed in sub clause (g), an employee will receive, during a period of annual leave, a loading of 17.5% calculated on the rates set out in Part III, Clause 2 – Rates of Pay.

(iii) Shift workers

An employee who would have worked shift work had that employee not been on annual leave will be paid either:

- (1) an additional loading of 17.5% calculated in accordance with the provisions of sub clause (h)(ii); or
- (2) where the employee would have received shift loadings provided in Part V, Clause 2 - Working Hours - Shift Work, had the employee not been on leave during the relevant period, the employee will receive the projected shift loading (calculated on a five week roster),

whichever is the greater.

(i) Termination of employment

The loadings prescribed at sub clauses (h)(ii) and (h)(iii) also apply to proportionate leave on lawful termination.

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(j) Deferred Leave

Where an employee in conjunction with their rostered annual leave seeks to take deferred days of paid absences, these deferred days shall be taken and paid for at the rate per day that would have applied as if they had been taken at the original date.

(k) Sickness During Annual Leave

When a period of sickness of one day or more occurs during annual leave and the employer receives a certificate from a qualified medical practitioner stating that the employee was unfit for duty during that period, the absence shall be counted as sick leave under the provisions of Clause 2 - Sick leave, and that period of annual leave shall be re-credited to the employee.

(l) Proportionate Leave on Termination

Where an employee has given five working days or more continuous service inclusive of any day off provided by Part V, Clause 1 - Working Hours - Day Work or Clause 2 - Working Hours - Shift Work, and the employee either leaves or is discharged from the service of the employer, that employee will be paid 1/12th of an ordinary week's wages in respect of each completed five working days of continuous service with the employer for which leave has not been granted or paid for in accordance with the award.

(m) Calculation of Continuous Service

- (i) In calculating service under this clause, all periods of paid leave will be counted as time worked.
- (ii) Unless otherwise recognised by this award or by the employer, all periods of leave without pay will not be counted as time worked in calculating service.
- (iii) This exclusion does not apply to an absence for which workers' compensation is payable in respect of periods of less than 12 months.

(n) Leave to be taken

The employer shall not make payment to an employee in lieu of annual leave or any part thereof except as is provided for in this clause.



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## **2. SICK LEAVE**

### (a) General

An employee, other than one engaged as a casual, who is absent from work on account of personal illness or personal injury, shall be entitled to sick leave without loss of pay pursuant to the provisions of sub clause (b) in the case of an employee in their first year of employment and sub clause (c) in any other case.

### (b) Entitlement - First Year Employee

An employee during their first year of employment with the employer shall be entitled to sick leave at the rate of one day at the beginning of each of the first ten calendar months of their employment.

### (c) Entitlement - Second and Subsequent Years of Employment

An employee who has completed one year of continuous service shall be credited with a further ten days' sick leave entitlement at the beginning of their second and each subsequent year which, subject to sub clause (f), shall commence on the anniversary of engagement.

### (d) Accumulation of Sick Leave

If the full period of sick leave, as prescribed in sub clauses (b) or (c) is not taken in any year, such proportion that is not taken shall accumulate from year to year.

### (e) Employee to Notify Absence

An employee shall, within 24 hours of the commencement of such an absence, inform the employer of the employee's inability to attend for duty, and as far as practicable state the estimated duration of the absence.

### (f) Evidence of Illness

(i) The employee shall provide satisfactory proof to the employer that they were unable to attend work for the period for which sick leave is claimed because of personal injury or illness.

(ii) In any one calendar year, an employee who has been allowed two days paid sick leave without a medical certificate shall not be entitled to payment for further sick leave unless, subject to paragraph (iii), the employee produces a certificate from a duly qualified medical practitioner certifying that the employee was unable to attend for duty on account of personal illness or injury.

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- (iii) In lieu of a medical certificate as prescribed in paragraph (ii), the employer may agree to accept from the employee a statutory declaration stating that the employee was unable to attend for duty on account of personal illness or injury.

Nothing in this subclause shall limit the employer's rights under paragraph (i).

- (g) If an employee is terminated by the employer and is re-engaged by the employer within a period of six months, then the employee's unclaimed balance of leave shall continue from the date of re-engagement.
- (h) There shall be no entitlement to paid leave of absence for any period in which there is an entitlement to worker's compensation.
- (i) Shift Worker

A shift worker absent on sick leave will have their sick leave credits debited in proportion to the shift not worked.

### **3. PARENTAL LEAVE**

The provisions of this clause apply to full-time and regular part-time employees, but do not apply to casual employees.

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

- (i) For the purpose of this clause "**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 spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) Subject to paragraph (iii), in this clause, "**spouse**" includes a de facto or former spouse.
- (iii) In relation to sub clause (e), "**spouse**" includes a de facto spouse but does not include a former spouse.

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(b) Basic Entitlement

- (i) After 12 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 females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption. Provided that such leave shall not extend beyond the child's first birthday in the case of maternity and paternity leave or the first anniversary of placement in the case of adoption leave.
- (ii) Subject to sub clause (c)(iv), 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.

(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 ten weeks;
  - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.
- (ii) When the employee gives notice under sub clause (c)(i)(1) 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.
- (iv) Subject to sub clause (b)(i) and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

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- (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, the 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 parental leave taken by a spouse, may not exceed 52 weeks.
  - (vii) Where leave is granted under sub clause (c)(iv), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- (d) Paternity Leave
- (i) An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:
    - (1) 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 dates on which he proposes to start and finish the period of paternity leave; and
    - (3) a statutory declaration stating:
      - (A) he will take that period of paternity leave to become the primary care-giver of a child;
      - (B) particulars of any period of maternity leave sought or taken by his spouse; and

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- (C) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
  - (ii) The employee will not be in breach of paragraph (i) 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 the employee's spouse; and
    - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iii) The 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 clause 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 a spouse, or other compelling circumstances.
  - (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

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(f) Variation of Period of Parental Leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

(g) 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 that they have accrued subject to the total amount of leave not exceeding 52 weeks.

(h) Transfer to a Safe Job

(i) 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.

(ii) 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.

(i) Returning to Work after a Period of Parental Leave

(i) An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

(ii) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to sub clause (h), the employee will be entitled to return to the position they held immediately before such transfer.

(iii) 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.

(j) Replacement Employees

(i) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

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- (ii) Before the employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(k) Part-Time Work to Meet Family Responsibilities

For the purpose of meeting family responsibilities and with the agreement of the employer, an employee may work part-time in the following circumstances:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of the birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (v) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment, after the birth or the placement of a child has, at the expiration date of the period of such part-time employment or the first period if there is more than one, the right to return to his/her former position.
- (vi) Nothing in paragraph (v) shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

#### **4. CARER'S LEAVE**

(a) Entitlement

An employee with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to a maximum of five days sick leave per sick leave year to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

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(b) Purpose of Carer's Leave

The entitlement to use sick leave is subject to the employee being responsible for the care of the person concerned and the person being either:

- (i) employee's immediate family; or
- (ii) a member of the employee's household.
- (iii) The term "**immediate family**" includes:
  - (1) spouse (including a former spouse, a de facto spouse and a former de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
  - (2) child or an adult child (including an adopted child, a stepchild, a foster child, or an ex-nuptial child), parent (including foster parent, step parent or legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee).

(c) Proof of Illness

The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is one that requires care by another.

(d) Sole Person Accessing Leave

In normal circumstances an employee must not take leave under this clause where another person has taken leave to care for the same person.

(e) Notice Requirements

- (i) The employee must, where practicable, give the employer:
  - (1) notice prior to the absence of the intention to take leave;
  - (2) the name of the person requiring care and their relationship to the employee;
  - (3) the reasons for taking such leave; and
  - (4) the estimated length of absence.
- (ii) If it is not practicable for the employee to give prior notice of the absence, the employee must notify the employer by telephone of the employee's absence at the first opportunity on the day of absence.



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- (f) Leave to be taken from Sick Leave

Each day or part day of leave taken in accordance with sub clause (a) is to be deducted from the amount of sick leave provided in Clause 2 - Sick leave.

## **5. BEREAVEMENT LEAVE**

- (a) In the event of the death of a wife, husband (including de facto wife and de facto husband), child, stepchild, brother, sister, father, mother, father-in-law, mother-in-law, grandfather, grandmother or grandchild, an employee may be granted bereavement leave up to and including the day of the funeral of such relative, without loss of pay or entitlements to continuous service, for a period not exceeding three working days.
- (b) The employer may request evidence of death in the form of a death notice.
- (c) This clause has no application where it coincides with any entitlement to other periods of paid leave.
- (d) With the consent of the employer a further period of up to ten working days, unpaid, may be granted in respect of a death within Australia or overseas of a relation to whom the clause applies.

## **6. JURY SERVICE**

- (a) An employee required to appear and serve as a juror in any court shall be entitled to be granted leave with pay for the period during which the attendance of the employee at court is required. Leave granted shall be included as continuous service.
- (b) The employee is not entitled to claim jury fees, only out-of-pocket expenses allowed by the Crown.
- (c) To obtain approval for leave under this clause a leave application should be supported by the notification that the employee is required to attend the court for jury duty.
- (d) If court attendance is not required during any stage of jury service an employee shall return to work.
- (e) Following service on a jury the employee shall submit an attendance certificate obtained from the Sheriff or Clerk of the court.
- (f) All other court appearances, except in the performance of duty, shall be without pay.

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## **7. HOLIDAYS WITH PAY**

- (a) An employee, other than a casual employee, shall be entitled to the following specified holidays with pay:
- Christmas Day;
  - Boxing Day;
  - New Year's Day;
  - Australia Day;
  - Hobart Regatta Day (south of Oatlands);
  - Eight Hour Day (Labour Day);
  - Good Friday;
  - Easter Monday;
  - Easter Tuesday;
  - ANZAC Day;
  - Queen's Birthday;
  - Recreation Day (where Hobart Regatta Day is not observed); and
  - Show and Cup days as gazetted for particular localities.
- (b) In addition to the specified holidays, where in the state or locality thereof an additional holiday with pay is proclaimed or gazetted by the authority of either the Commonwealth or State Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the state or a locality thereof, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be observed, then such day shall be deemed to be a holiday with pay for the purpose of this award, for employees covered by this award who are employed in the locality in respect of which the holiday has been proclaimed or ordered as required.
- (c) By agreement between the employer and the employees, an alternative day may be taken as a holiday with pay in lieu of any of the days prescribed by paragraphs (a) or (b).
- (d) The employer and an individual employee may agree to the employee taking another day as the holiday with pay in lieu of the day which is otherwise being observed as the holiday in the enterprise or relevant section of the enterprise.
- Provided that on the occasion that Anzac Day falls on a weekend a day in lieu is not granted.
- (e) The entitlement to the specified holidays with pay shall be without loss of pay and shall count as continuous service.
- (f) Payment for the specified holidays with pay that are taken and not worked shall be at the normal rate of pay that would have applied to the employee concerned when, if it were not for such holiday, the employee would have been at work.

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- (g) An employee required to work on any of the specified holidays, where such holiday applies at the employee's normal place of work, and the employee is required to work in a locality where the holiday does not apply, then such holiday will be added to the employees annual leave.
- (h) Notwithstanding sub clauses (a) and (b), employees may be required to attend work during any such holiday in circumstances where the employer requires an Agency or part of an Agency to be kept open in the public interest for the whole or any portion of a holiday.
- (i) Where an employee is absent from employment on the working day before and/or after a holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for the holiday.

## **8. STATE SERVICE ACCUMULATED LEAVE SCHEME**

- (a) Title

The scheme is to be known as the State Service Accumulated Leave Scheme (SSALS).

- (b) Summary of Scheme

The SSALS allows Heads of Agency to approve Plans under which participating employees will, by taking a reduction in normal salary for a given period, become

entitled at the end of that period to a pre-determined amount of special ("accumulated") leave during which they will be paid salary at the same reduced rate.

- (c) Interpretation

- (i) The conditions and administrative arrangements in the SSALS are to be administered in conjunction with the *State Service Act 2000* and Regulations, this award and relevant certified agreements, and Ministerial and Commissioner Directions issued pursuant to the *State Service Act 2000*.
- (ii) "**Accumulated leave**" means the period of time that is accumulated under the Plan as leave during a work period.
- (iii) "**Compulsory deductions**" include garnishees, salary attachments, court orders, etc.
- (iv) "**Leave period**" means the period specified in a Plan when a participating employee is absent from work on accumulated leave.

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- (v) **“Normal salary”** means the salary that would be paid to a participating employee if that person was not participating in a Plan and includes salary expressed as an annual rate, fortnightly rate, weekly rate, daily rate or hourly rate. It includes all allowances that are paid as an annual rate, fortnightly rate, weekly rate, daily rate or hourly rate but not overtime payments and shift work penalty rates unless they are paid as a component of an annualised rate.
- (vi) **“Operational requirements”** means the need to ensure that the Agency is to be operated as effectively, efficiently and economically as possible.
- (vii) **“Participating employee”** means an employee whose election to participate in a Plan has been approved by their Head of Agency.
- (viii) **“Plan”** means an arrangement in the SSALS consisting of a specified work period followed by a specified leave period.
- (ix) **“Work period”** means the period specified in a Plan when an employee is at work.

(d) Plans

The SSALS consists of arrangements known as Plans. For example:

Work period	Percentage of normal salary payable during the period of the plan	Leave period
Four years	80% The four over five year plan	One year
Three years	75% The three over four year plan	One year
20 months	83.3% The 20 over 24 month plan	Four months
18 months	75% The 18 over 24 month plan	Six months
48 weeks	92.3% The 48 over 52 week plan	Four weeks
40 weeks	76.9% The 40 over 52 week plan	12 weeks
(Other plan) “A”	A 100 A+B x 1 =.....%	(Other plan) “B”
.....Years	Year	.....Years
.....Months	The .... over.....Month Plan	.....Months
.....Weeks	Week	.....Weeks

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(e) Application of SSALS

- (i) The Head of an Agency, after considering the operational requirements of the Agency, determines whether any Plan or Plans are to be available to employees in the Agency.
- (ii) A Head of an Agency may make any Plan or Plans available to employees in that Agency or an employee or employees can request to the Head of Agency that a Plan be made available to them.
- (iii) A Plan may be made available to any permanent employee (full-time or part-time) including an employee who works shifts. A Plan may be made available to any fixed term employee the term of whose contract of employment is sufficient to cover the period of the Plan.
- (iv) The Head of Agency determines:
  - (1) whether one or more Plans will be made available to all or only some of the employees;
  - (2) whether particular Plans will be made available to particular categories of employees;
  - (3) whether quotas will apply to the number of employees who may participate in a Plan, and whether quotas will apply to any category of employees;
  - (4) the selection arrangements where quotas are imposed; and
  - (5) the commencement date of any Plan.
- (f) Where an employee participating in a Plan is promoted, transferred, seconded or otherwise moved either into another Agency or within their own Agency, the Head of the Agency in which the employee is thereafter employed will, after consultation with the employee and taking into account the operational requirements of the Agency, determine whether or not the employee is able to continue on their Plan.
- (g) If the Head of Agency determines under (f) that the employee is not able to continue on their Plan, the Head of Agency may forthwith terminate the employee's Plan whereupon the employee becomes entitled to a period of accumulated leave, which bears the same proportion to the total leave period of the Plan as the period worked under the Plan bears to the total work period, to be remunerated at the percentage of normal salary payable during the period of the Plan. The employee may apply to the Head of Agency at any time to take that leave, and it shall be granted as soon as can be, consistent with the operational requirements of the Agency.

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(h) Participation in SSALS

- (i) Where the Head of an Agency offers a Plan to an employee the employee may elect to participate in the Plan by lodging an election in writing with the Head of Agency in any form which the Head of Agency may approve.
- (ii) The Head of Agency may accept or reject an election to participate made in accordance with paragraph(i).
- (iii) The Head of Agency will notify the employee in writing if the employee's election has been disapproved.
- (iv) Where the employee's election is approved, the Head of Agency will endorse approval on the form of election which was lodged by the employee, and will provide the employee with a copy of that endorsed form.
- (v) An employee's election under paragraph (i) does not entitle the employee to participate in a Plan until it is approved by the Head of Agency in accordance with paragraph (iv).
- (vi) A participating employee wishing to withdraw from a Plan must apply in writing to their Head of Agency who may refuse the application if he or she considers such refusal to be reasonably required to meet the operational requirements of the Agency.

(i) Conditions and Administrative Arrangements

(i) Work Period to be Completed Prior to Period of Leave

The work period specified in a Plan must be completed before a participating employee can commence the leave period specified in that Plan.

(ii) Suspension of Plan

- (1) The Head of Agency on the application of the employee or otherwise can in writing suspend a Plan.
- (2) In deciding to suspend a Plan, either on application of the employee or otherwise, the Head of Agency will take into account the employee's circumstances and response to any proposal to suspend, and what is reasonably required to meet the operational requirements of the Agency. Suspension may occur either during the work period or the leave period of the Plan, and will be for such period as may be specified by the Head of Agency in the instrument by which the Plan is suspended.
- (3) Where the total period of the Plan comprises five years or more (for example a four over five plan) the Plan may only be suspended with the agreement of the employee.

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(4) An employee is entitled to compensation for reasonable expenses incurred by the employee, but not otherwise recoverable, as a result of the Head of Agency's decision to suspend the plan otherwise than on the application of the employee.

(j) Accumulated Leave

(i) Accumulated leave is to be managed in accordance with any legislative requirements and with any guidelines that may be issued by the relevant Head of Agency which are not inconsistent with the SSALS.

(ii) A record is to be kept to show at all times the exact amount of the accumulated leave for each participating employee.

(iii) On withdrawal from a Plan, the accumulated leave is to be taken immediately or either wholly or in part at a later time approved by the Head of Agency, at the percentage of normal salary payable during the period of the Plan. It is not to be paid out unless the participating employee's employment terminates.

(iv) Where a participating employee moves to another Agency the exact amount of the accumulated leave and salary for that employee is to be transferred to that Agency not later than 20 working days after the date of movement.

(k) Payment During the Leave Period

During the leave period the participating employee will receive salary at the percentage of normal salary payable during the period of the Plan. Normal employment conditions will apply as if the employee was on annual leave. An employee may, on request, receive a lump sum payment in either one or two instalments.

(l) Salary Increments

Salary increments will accrue throughout the period of a Plan.

(m) Superannuation

(i) Superannuation contributions are to be paid throughout the period of a Plan and in accordance with the rate of salary applicable under the Plan.

(ii) It is the responsibility of a participating employee to obtain any personal superannuation advice from the Retirement Benefits Fund Board or from the employee's own adviser(s).

(iii) A participating employee's superannuation contributions (where the employee is a contributor to a superannuation scheme other than Retirement Benefits Fund) and entitlements depend upon the employment arrangements for that employee.

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(iv) An Agency's superannuation responsibilities and financial obligations for participating employees depend upon the nature of the employment arrangements for each participating employee.

(n) Other Compulsory Deductions from Pay

Compulsory deductions from pay will be made throughout the period of a Plan.

(o) Voluntary Deductions from Pay

Voluntary deductions from pay (including life insurance premiums, private health fund premiums, union membership fees etc.) made by the Agency at the request of an employee will continue throughout the period of the Plan.

(p) Administrative Records

An Agency administering a Plan must maintain proper separate records of accruals based upon that Plan.

(q) Recreation Leave

Recreation leave entitlements accrue throughout the period of the Plan and will be taken otherwise than during the leave period of a Plan at the percentage of normal salary payable during the period of the Plan. Whenever taken, entitlements will be deducted from credits in the normal manner.

(r) Sick Leave

(i) Sick Leave entitlements taken during the period of a Plan will be taken at the rate of salary applicable under the Plan and will be deducted from credits in the normal manner.

(ii) Sick leave entitlements will accrue throughout the period of the Plan and access to those entitlements will be in accordance with the provisions of this award.

(s) Adoption, Maternity and Paternity leave

Where a participating employee is absent on maternity leave or adoption leave, either within the work period of a Plan or during the leave period, the employee's participation in the Plan is not affected by that adoption, maternity and paternity leave. Salary arrangements established by the Plan apply during maternity or adoption leave.



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(t) Other Leave

Payment of all other leave entitlements (including leave on account of special circumstances, bereavement leave, leave of absence with or without pay, defence force leave, leave for jury service, leave in lieu of overtime, etc.) taken during the currency of a Plan will be at the rate of salary applicable under the Plan. Such entitlements will when taken be deducted from credits in the normal manner, and are to be taken otherwise than during the period of a Plan.

(u) Long Service Leave

(i) Long service leave is provided in the *Long Service Leave (State Employees) Act 1994*.

(ii) Long service leave entitlements accrue throughout the work period of a Plan. The leave period is not to be regarded as a period of employment in calculating length of employment for the purposes of that Act, but is not to be taken as interrupting the continuous employment of a participating employee. Long service leave entitlements are to be taken otherwise than during the leave period of a Plan.

(iii) Where a participating employee is absent on long service leave in the work period of a Plan the employee's participation in the Plan is not postponed for the duration of that long service leave, and salary is to be paid at the rate of salary applicable under the Plan.

(v) State Service Holidays (Holidays with Pay)

The leave period of a Plan is to be extended by the number of State Service holidays (Holidays with pay) falling within it.

(w) Workers Compensation

A Plan is to be suspended during any period of incapacity for which the worker is entitled to compensation under the provisions of the *Workers Rehabilitation and Compensation Act 1988*, effective from the day before the commencement of the period of incapacity and terminating upon the last day of the incapacity. Upon suspension of a Plan in accordance with this provision, the employee reverts to normal salary entitlement.

(x) Employment During Period of Leave

(i) A participating employee shall not be employed elsewhere in the Tasmanian State Service during the leave period of a Plan.

(ii) Where a participating employee wishes to undertake employment outside the Tasmanian State Service during the leave period of a Plan, the employee is required to comply with the relevant provisions of the *State Service Act 2000*.

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(y) Cessation of Employment

Where a participating employee ceases to be employed in the Tasmanian State Service, the Plan will thereupon terminate and the Head of the Agency will pay in one lump sum to that former employee, or to that person's estate, the exact amount of that former participating employee's accumulated leave entitlement, less the prescribed income tax and any other compulsory deductions, not later than 20 working days after termination.

## **PART VII – CONSULTATIVE MECHANISMS**

### **1. DISPUTE RESOLUTION PROCEDURE**

The parties agree that the prevention and/or resolution of any dispute about the terms and operation of this award will be by consultation and direct negotiation according to the following procedure:

- (a) The employee must first raise the matter at the place of work with his or her immediate supervisor.
- (b) If not resolved the matter will then be discussed between the employee organisation representative or a representative of the employee's choice and the head of the work unit at which the employee is employed.
- (c) In the event that the matter is not resolved the matter will be discussed between the employee organisation representative or a representative of the employee's choice, and a senior representative of the employer.
- (d) If the matter is still not resolved it may be submitted to the Commission for resolution.
- (e) Where the above procedures are being followed work will continue as normal, unless an employee has a reasonable concern about an imminent risk to his or her health and safety. Subject to the relevant provisions of the state's occupational health and safety laws, even if an employee has a reasonable concern about an imminent risk to their health and safety, the employee must not unreasonably fail to comply with a direction by the employer to perform other available work, whether at the same or at an alternative location, that is safe and appropriate for the employee to perform.
- (f) No party will be prejudiced as to final settlement by the continuation of work in accordance with paragraph (e).
- (g) The parties will cooperate to ensure that these procedures are carried out expeditiously.

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## **2. ENTERPRISE FLEXIBILITY**

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between the employer and all or some of the employees engaged by the 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 shall be advised by the employer of his or her intention to commence discussions with employees on an agreement under this clause.
  - (iv) The union must be a party to the agreement.
  - (v) The union shall not unreasonably oppose any agreement.
- (c) An enterprise agreement shall be signed by the parties, being the employer and the union and contain the following:
  - (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement that seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

Tim Abey  
**COMMISSIONER**

21 June 2007