

**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s.23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T13471 of 2009)

**Private and Public Sector Awards**

**FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case 2009 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$12.00 per week - wage related allowances to be increased by 1.9% – meal allowance increased to \$15.40 - Supported wage increased to \$71.00 - State Minimum Wage rate determined at \$558.10 - s.35(1)(b) – operative date ffpp 1 August 2009 - Wage Fixing Principles set aside in part**

**MEDICAL PRACTITIONERS (PRIVATE SECTOR) AWARD**

**ORDER**

**No. 1 of 2009  
(Consolidated)**

AMEND THE **MEDICAL PRACTITIONERS (PRIVATE SECTOR) AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

## **1. TITLE**

This award shall be known as the "Medical Practitioners (Private Sector) Award".

## **2. SCOPE**

This award is established in respect of the industry of a Medical Practitioner registered under the *Medical Act 1959* and engaged in private practice.

## **3. ARRANGEMENT**

<u>Subject Matter</u>	<u>Clause No</u>	<u>Page No</u>
Title	1	2
Scope	2	2
Arrangement	3	2
Date of Operation	4	3
Supersession and Savings	5	3
Parties and Persons Bound	6	3
Definitions	7	4
Wage Rates	8	6
Annual Leave	9	13
Bereavement Leave	10	14
Breakages	11	15
Casual Employees	12	15
Contract of Employment	13	16
Deduction of Union Subscriptions	14	16
Enterprise Flexibility	15	16
Holidays with Pay	16	17
Hours of Duty	17	18
Meal Allowance	18	19
Meal and Rest Period	19	19
Occupational Superannuation	20	19
Overtime	21	22
Parental Leave	22	23
Part-Time Employees	23	32
Payment of Wages	24	32
Personal Leave	25	32
Reference of Disputes	26	35
Saturday, Sunday and Holiday Work	27	36
Time and Wages Record	28	36
Tools of Trade	29	36
Uniforms	30	36

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

This award shall come into operation from the first full pay period to commence on or after 1 August 2009.

#### **5. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes the Medical Practitioners (Private Sector) Award No. 1 of 2008 (Consolidated).

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

#### **6. PARTIES AND PERSONS BOUND**

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
  - (i) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.
  - (ii) the Australian Nursing Federation Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope; and
  - (iii) the Health Services Union of Australia, Tasmania No. 1 Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

## **7. DEFINITIONS**

For the purposes of this award:

**'Casual employee'** means one engaged and paid as such, but whose term of engagement shall not exceed five days at any one time.

**'Clerk'** means an adult employee who is engaged to perform duties which are of a strictly clerical nature and do not come within the scope of classifications 'Registered Nurse', 'Surgery Attendant' and 'Secretary'.

**'Medical Scientist'** means a person employed as such who holds qualifications acceptable for corporate membership of the Australian Institute of Medical Technologists, and who is engaged on professional medical technology duties.

**'Part-time employee'** is:

- (a) an employee who is engaged for less than 20 hours per week, or
- (b) an employee who is engaged as such by the week and paid to work 20 hours or more per week but not exceeding 40 hours per week.

**'Radiographer'** means a person employed as such who holds the Diploma of Membership of the Australian Institute of Radiography, or its equivalent and has been engaged on full-time duties as a radiographer trainee for a minimum of three years under the direction of a qualified radiographer or a full time radiologist.

**'Registered Auxiliary Nurse, one year trained and two year trained'** means an employee appointed as such and who is registered under the provisions of the *Tasmanian Auxiliary Nursing Act, 1949*.

**'Registered Nurse'** means a nurse who is registered with the Nurses Registration Board and is the holder of a current general nursing certificate.

**'Secretary'** means an adult employee who has had not less than two years' experience in a doctor's surgery and whose duties include the forwarding of accounts, banking of moneys and who is in charge of the book-keeping system.

**'Senior Technical Assistant - Laboratory'** means a person employed as such who carries out routine laboratory tests either under indirect supervision or for the majority of his/her employment.

**'Service'** means service in a doctor's surgery within the employee of one employer or of several.

**'Show Day'** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local

show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

**'Surgery Attendant'** means an adult employee (other than a registered nurse) who performs the duties of a receptionist and/or the keeping of the appointment book, clerical work associated with the forwarding of accounts, the receipt and banking of moneys and attending to patients and other general duties in a doctor's surgery.

**'Technical Assistant - Laboratory'** means a person employed as such in a pathology laboratory who in addition to assisting in laboratory procedures carries out routine laboratory tests under supervision.

**8. WAGE RATES**

1. WAGES

Employees of a classification mentioned herein shall be paid a weekly wage rate not less than the amount assigned to that classification.

**SUBDIVISION A - REGISTERED NURSING STAFF**

	Base Rate	Safety Net Adjustment	Weekly Wage Rate(40 hours)
	\$	\$	\$
(a) Registered Nurse			
1st year of service	384.20	232.70	616.90
2nd year of service	397.10	232.70	629.80
3rd year of service	402.10	232.70	634.80
4th year of service	413.90	232.70	646.60
5th year of service and thereafter	426.60	234.70	661.30
(b) Registered Auxiliary Nurse			
One Year Trained -			
1st and 2nd year of service	361.40	232.70	594.10
3rd year of service and thereafter	367.30	232.70	600.00
Two Year Trained -			
1st and 2nd year of service	367.30	232.70	600.00
3rd year of service and thereafter	373.80	232.70	606.50

**SUBDIVISION B - ANCILLARY AND CLERICAL STAFF**

	Base Rate	Safety Net Adjustment	Weekly Wage Rate(40 hours)
	\$	\$	\$
(a) Surgery Attendant			
1st year of service	330.30	232.70	563.00
2nd year of service	353.80	232.70	586.50
3rd year of service	371.10	232.70	603.80
4th year of service and thereafter	392.40	232.70	625.10
(b) Secretary			
1st year of service	353.80	232.70	586.50
2nd year of service	371.10	232.70	603.80
3rd year of service and thereafter	392.40	232.70	625.10
(c) Cleaners	328.00	232.70	560.70

(d) Clerk			
1st year's adult experience	325.40	232.70	558.10
2nd year's adult experience and thereafter	344.80	232.70	577.50
	Base Rate	Safety Net Adjustment	Weekly Wage Rate(37.5 hours)
	\$	\$	\$
(e) Radiographer			
1st year of service	423.90	234.70	658.60
2nd year of service	439.20	234.70	673.90
3rd year of service	455.60	234.70	690.30
4th year of service	472.10	232.70	704.80
5th year of service and thereafter	488.70	232.70	721.40
(f) Medical Scientist			
1st year of service	432.80	234.70	667.50
2nd year of service	443.30	234.70	678.00
3rd year of service	459.70	234.70	694.40
4th year of service	486.00	232.70	718.70
5th year of service	515.30	232.70	748.00
6th year of service	550.90	232.70	783.60
7th year of service	586.70	232.70	819.40
8th year of service	611.90	232.70	844.60
9th year of service and thereafter	632.30	230.70	863.00
	Base Rate	Safety Net Adjustment	Weekly Wage Rate (40 hours)
	\$	\$	\$
(g) Technical Assistant - Laboratory			
1st year of service	359.20	232.70	591.90
2nd year of service	362.60	232.70	595.30
3rd year of service	366.00	232.70	598.70
4th year of service and thereafter	368.80	232.70	601.50
(h) Senior Technical Assistant - Laboratory			
1st year of service	373.80	232.70	606.50
2nd year of service	387.60	232.70	620.30
3rd year of service	396.50	232.70	629.20
4th year of service and thereafter	405.30	232.70	638.00
(i) Clerk/Driver	344.90	232.70	577.60

**PROVIDED** that when determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in which awards of the Tasmanian Industrial Commission relating to private industry employees are established, experience obtained after reaching the age of 18 years shall be counted as adult experience.

2. JUNIORS

The minimum weekly wage rate to be paid to junior employees shall be the undermentioned percentages of the weekly wage rate prescribed for a Surgery Attendant, 1st year of service, classification (a), Subdivision B - Ancillary and Clerical Staff of this clause:

	%
Under 17 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

**PROVIDED** that when determining the amount payable to an employee attaining the age of 21 years, who has been employed under this award as a junior, experience obtained after reaching the age of 18 years shall be counted as adult experience.

3. ALLOWANCES

(a) Typing and/or Stenography - Any employee classified under items (i) and (ii), Subdivision A - Registered Nursing Staff or (iii) and (iv), Subdivision B - Ancillary and Clerical Staff of subclause 1 - Wages of this clause, who performs the duties of a typist, and who holds a certificate of proficiency from a registered business college, or who attains a standard of proficiency which will enable the employee to process medical reports and documents to the satisfaction of the employer shall be paid an additional amount of \$7.40 per week.

**PROVIDED** that an employee who, without aid, serves more than one part-time doctor, an additional amount of \$6.00 per week shall be paid, provided that an employee serving more than one full-time doctor shall be paid an additional amount of \$10.30 per week.

(b) A registered nurse required to make use of additional certificates shall, whilst employed by a doctor practising in that field, be paid an additional amount of \$10.60 per week.

(c) The payments prescribed in this clause shall be made in a manner so that they do not exceed the amount of \$26.00 per week in the aggregate.



#### 4. SUPPORTED WAGE SYSTEM

##### (a) Eligibility Criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) of this subclause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

**PROVIDED** that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

**PROVIDED FURTHER** that this subclause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

##### (b) For the purposes of this subclause:

**'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

**'Assessment instrument'** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

**'Disability Support Pension'** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

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

##### (c) Supported Wage Rates

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

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

**PROVIDED** that the minimum amount payable shall be not less than \$71 per week.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of

review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace Adjustment

An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

(i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

(ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).

(iii) The minimum amount payable to the employee during the trial period shall be no less than \$71 per week or such greater amount as is agreed from time to time between the parties.

(iv) Work trials should include induction or training as appropriate to the job being trialed.

(v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

## 5. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by subclause 4 - Supported Wage System is \$558.10 per week.

**PROVIDED** that employees classified as Clerk, first and second year of service shall continue to be paid the rate prescribed for the classification in Clause 8 – Wage Rates, subclause 1 – Wages, subdivision B – Ancillary and Clerical Staff, paragraph (d) hereof until 18 June 2004.

- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in paragraph (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in paragraph (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

(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 2009 State Wage Case Decision (T13471 of 2009) and all previous safety net and state wage case adjustments.

## **9. ANNUAL LEAVE**

### (a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

**PROVIDED** that, by mutual agreement between the employer and the employee, leave may be taken in any combination providing one period is at least 14 consecutive days (i.e., 10 working days).

### (b) Payment for Period of Leave

- (i) All employees before going on annual leave other than casual or part-time employees working less than 20 hours per week who attract a 20 per cent loading in lieu of annual leave, sick leave and public holidays as mentioned in Clause 12 - Casual Employees, and Clause 23(b) - Part-Time Employees, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.
- (ii) In addition thereto, all employees other than part-time employees in receipt of a 20 per cent loading in lieu of public holidays, annual leave and sick leave, shall be paid an amount equivalent to 17.5 per cent of his/her normal salary, or projected shift roster whichever is the greater, plus, where applicable, any higher duty allowance or all purpose payment payable to the employee concerned.

### (c) Proportionate Leave on Termination of Service

A weekly employee who lawfully leaves the employment or who is dismissed, except for misconduct or neglect of duty, shall be paid 13 1/3 hours for each completed month of continuous service.

### (d) Single Day Annual Leave

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

## **10. BEREAVEMENT LEAVE**

### (a) Paid Leave Entitlement

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

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer.

**PROVIDED** that no such payment shall be made in respect of an employee's rostered days off.

**PROVIDED FURTHER** that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

### (b) The term 'immediate family' includes:

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

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

(c) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

(d) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave

- (i) Subject to the evidentiary requirements in subclause (a), casual employees and employees in receipt of a loading in lieu of paid leave are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.
- (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **11. BREAKAGES**

Except in cases of proved carelessness, an employee shall not be required to pay for any breakages occurring in the ordinary course of the employees specified duties.

## **12. CASUAL EMPLOYEES**

- (a) The minimum rates that may be paid to casual employees shall be one-fortieth of the weekly rate mentioned in subclause 1 - Wages of Clause 8 - Wage Rates hereof, and in addition thereto 20 per cent.
- (b) Unless otherwise mutually arranged to the contrary, a casual employee other than a cleaner, shall be paid as for a minimum of four hours work on any one day.

### **13. CONTRACT OF EMPLOYMENT**

With the exception of employees engaged as specified in Clause 12 - Casual Employees, all employment shall be by the week and the employment of an employee will not be terminated except for misconduct or neglect of duty which would justify instant dismissal without at least one week's notice being given by the employer to the employee and the employee shall likewise give to the employer one week's notice of the employees intention to terminate the employees employment. If one week's notice be not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be.

An employee shall be entitled to receive on request a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service and shall become the absolute property of the employee. Any prospective or future employer shall return the reference to the employee within seven days of having received it.

An employer shall not, in exercising the employers powers of termination in this clause, make any distinction, exclusion or preference on the basis of sex, other than a distinction, exclusion or preference based on the inherent requirements of a particular job.

### **14. DEDUCTION OF UNION SUBSCRIPTIONS**

The employer may on receipt of an authority from the employee deduct union subscriptions quarterly in advance from the wages of that employee and forward the amount deducted to the office of the appropriate registered employee organisation.

### **15. ENTERPRISE FLEXIBILITY**

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



- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:
  - (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

#### **16. HOLIDAYS WITH PAY**

- (a) All employees (other than casuals and intermittent employees and part-time employees mentioned in Clause 23 - Part-Time Employees, subclause (b) shall be allowed the following days as paid holidays: New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined in Clause 7- Definitions), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in subclause (a), which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when if it were not for such holiday, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) Subject to agreement being reached between the employer and the employee(s) concerned, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate.

**PROVIDED** that at all times the employee shall have the right to consult with his/her appropriate union before entering into such an agreement.

**PROVIDED FURTHER** that for the purpose of this clause each days holiday with pay shall stand alone.

## **17. HOURS OF DUTY**

- (a) Except where otherwise mutually agreed the ordinary hours of duty shall not exceed 40 per week within a spread of nine hours per day to be worked as follows:

Between the hours of 8.30am and 8.30pm, Monday to Friday inclusive.

- (b) Evening Shift Allowance

When normal hours of duty are altered, so that an employee finishes work after 6.00pm, an additional rate of 15 per cent shall be paid for those days.

- (c) Make Up Time

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

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

- (d) Rostered Days Off

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

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

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

#### **18. MEAL ALLOWANCE**

Where an employee is called upon to work more than one and one-half hours after the usual time for finishing work the sum of \$15.40 shall be paid for a meal in addition to overtime rates.

#### **19. MEAL AND REST PERIOD**

- (a) A period of one full hour for lunch shall be taken between the hours of 12 noon and 2.00pm.
- (b) Employees shall be allowed a rest period between the start of work and the midday meal break and a rest period between the resumption of work after the midday meal break and the cessation of work for the day. Each rest period shall be of 10 minutes duration.

#### **20. OCCUPATIONAL SUPERANNUATION**

- (a) Contributions
  - (i) The employer shall make an occupational superannuation contribution equivalent to 3 per cent of ordinary time earnings into the funds known as TASPLAN or HESTA or any other approved fund where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees as from 15 September 1990 provided that in the case of all eligible casual and

part-time employees contributions shall only be made where the employee works at least 38 hours during a fund billing statement month.

Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

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

(b) Definitions

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

**'Eligible employee'** means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer. Where an eligible employee has completed at least three months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

**'HESTA'** means the Health Employees Superannuation Trust Australia established by Trust Deed on 30 July 1987.

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

**'TASPLAN'** shall be an approved fund established by Trust Deed made on 24 March 1987.

(c) Exemptions

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

- (i) Where the fund subject to the exemption application is an approved fund which was established prior to 1 January 1990 and occupational superannuation contributions equivalent to 3 per cent of ordinary time earnings were being on behalf of employees in the establishment covered by

this award prior to 1 January 1990 and have continued to be paid since that date; or

- (ii) Where an employer can demonstrate special and compelling circumstances to justify the use of an approved fund other than TASPLAN or HESTA.
- (iii) The following employers are exempt from contributing to TASPLAN or HESTA, but shall observe all other provisions of this clause and shall make the contributions in accordance with subclause (a) to the following approved fund:

Employer	Fund
Stable Investments Pty Ltd	Legal and General Superchoice

(d) Procedure for seeking Exemption

- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 November 1990 hearing and determination.

Such application shall contain the following information:

- (1) Name of fund into which the funds are to be paid.
  - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (3) Summary of structure and benefits.
  - (4) Level of administration charge.
  - (5) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
  - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
  - (iv) An employer who commences a new business after 15 September 1990 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 15 September 1990.

## **21. OVERTIME**

- (a) For all time of duty before the usual time for commencing work or after the usual time for ceasing work or for work performed outside the ordinary hours of duty, payment shall be made at the rate of time and a half for the first two hours and double time thereafter.
- (b) Overtime shall not be payable unless the period of time worked in excess of the ordinary hours exceeds 15 minutes on any day and the overtime is worked on the orders of the employer or the employers representative.
- (c) Time Off In Lieu of Payment

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

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off shall be taken at the penalty equivalent.
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book at each time this provision is used.

## **22. PARENTAL LEAVE**

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

### (a) Definitions

For the purposes of this clause:

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

### (b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions

apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.

- (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
  - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
  - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
  - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.



(vi) Special Maternity Leave

- (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal 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 personal 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 personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

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

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
  - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
  - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
  - (3) a statutory declaration stating:

- (A) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (B) particulars of any period of maternity leave sought or taken by the mother, and
  - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

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

necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

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

(g) Part time Work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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

(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
  - (A) that the employee may work part-time;
  - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
  - (C) upon the classification applying to the work to be performed; and
  - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

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

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

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.

- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
  - (iv) Unbroken service as a replacement employee shall be treated as continuous service.
  - (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (i) Return to Former Position after a Period of Parental Leave or Part Time Work

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

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
  - (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.
  - (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
  - (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.  
By mutual agreement between the employee and the employer, the period of leave may be further extended.
- (j) Redundancy
- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

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

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

- (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subparagraph (I)(i)(1).

### **23. PART-TIME EMPLOYEES**

- (a) Part-time employees engaged to work 20 or more hours per week shall be entitled to the annual leave, holidays and sick leave as prescribed in Clause 9 - Annual Leave, Clause 16 - Holidays with Pay, and Clause 25 - Personal Leave, provided that payment therefor shall be made at the rate normally paid to such employee for a similar period of time worked.

The wage rates payable per hour shall be one-fortieth of the relevant rate above set out.

- (b) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one-fortieth of the relevant rate set out, plus an additional 20 per cent, such payment being in lieu of public holidays, annual leave, and sick leave.
- (c) Penalty provisions - penalty rates prescribed in Clause 27 - Saturday, Sunday and Holiday Work herein are applicable to part-time employees.

### **24. PAYMENT OF WAGES**

- (a) Wages shall be paid during working hours and not later than Thursday of each week or at such other times as may be mutually agreed upon between the employer and the employee.

**PROVIDED** that subject to agreement being reached between the employer and the majority of employees concerned, wages may be paid by Electronic Funds Transfer no later than Thursday each week and/or each fortnight. If Electronic Funds Transfer is agreed to, wages shall be deposited into an account nominated by the employee and the employee shall pay all costs associated with the transfer and one withdrawal per pay period.

- (b) On, or prior to pay day, if requested by the employee in writing, the employer shall state to the employee, the amount of wages to which he/she is entitled, the amount of tax deductions made therefrom, the amount of any other deductions made therefrom, and the net amount being paid to the employee.

### **25. PERSONAL LEAVE**

The provisions of this clause apply to an employee, other than one engaged as a casual or part-time employee in receipt of a loading in lieu of an entitlement to paid leave as specified in Clause 23 – Part-Time Employees. The entitlements of casual employees and employees in receipt of a loading in lieu of an entitlement to paid leave are set out in



subclause (i) – Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities.

(a) Definitions

The term ‘**immediate family**’ includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave\_

- (i) Paid personal leave is available to an employee, when they are absent:
  - (1) due to personal illness or injury; or
  - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee’s care and support or who requires care due to an unexpected emergency.
- (ii) An employee, other than one engaged as a casual or intermittent employee or a part-time employee mentioned in Clause 23 - Part-time Employees, subclause (b) hereof, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay.
- (iii) The employee shall not be entitled in any year to personal leave in excess of 80 hours of ordinary working time.

**PROVIDED** that during the first three months of employment, personal leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer.

- (iv) For the purpose of administering paragraph (b)(iii) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (v) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (b)(iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be

credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.

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

(c) Personal Leave for Personal Injury or Sickness\_

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

- (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

- (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

The employee shall, within 48 hours of the commencement of such absence, inform the employer of his/her inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

(f) Evidence Supporting Claim

- (i) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed;
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the

emergency and that such emergency resulted in the person concerned requiring care by the employee.

(g) Personal Leave and Workers' Compensation

The employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation.

(h) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(i) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities

(i) Subject to the evidentiary and notice requirements in subclauses (e) and (f), casual employees and employees in receipt of a loading in lieu of paid leave, are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

(ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.

(iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **26. REFERENCE OF DISPUTES**

Any dispute arising in respect of any matter to which this award relates shall be referred to the Tasmanian Industrial Commission for adjudication.

## **27. SATURDAY, SUNDAY AND HOLIDAY WORK**

- (a) For all time of duty on a Saturday payment shall be made at the rate of time and one half for the first three hours and double time thereafter. Provided that all time of duty after noon on a Saturday shall be paid at the rate of double time.
- (b) For all time of duty on a Sunday, payment shall be made at the rate of double time with a minimum payment as for four hours worked.
- (c) For all time of duty on any of the holidays mentioned in Clause 16 - Holidays with Pay of this award, payment shall be made at the rate of double time and one-half with a minimum payment as for four hours worked.

**PROVIDED** that the requirement to pay minimum payments for overtime Sundays and Public Holidays shall not apply in pathology laboratories where alternative methods of payment agreed between the employer, employees and appropriate union exists.

**PROVIDED FURTHER** that where agreement is reached between the employer and the employee(s) concerned, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate and for the purpose of this clause each day (Saturday, Sunday and Holiday Work) shall stand alone.

**PROVIDED ALWAYS** that at all times the employee shall have the right to consult with his/her appropriate union before entering into such an agreement.

## **28. TIME AND WAGES RECORD**

Each employer shall keep a time record showing the name of each employee, the number of hours worked, when such hours are worked, the rates of pay, and the wages paid each week.

## **29. TOOLS OF TRADE**

Employers shall provide for the use of employees all necessary appliances for surgical and clerical duties including writing materials and pens.

## **30. UNIFORMS**

- (a) Sufficient and serviceable uniforms shall be provided free of cost to all employees required to wear uniforms, or if the employee provides his/her own uniforms he/she shall be paid an allowance of \$2.80 per week. Uniforms shall be laundered at the expense of the employer or an allowance of \$2.90 per week paid to the employee.

- (b) An employee, who has been supplied with a uniform by the employer shall, on leaving the service of the employer, return any uniform or part thereof which is still in use by him/her immediately prior to him/her leaving the employment.
- (c) From 1 January 1979 all employees shall be notified in writing as to whether or not they are required to wear uniforms. All employees engaged after that date shall be so advised on engagement.

P C Shelley  
**DEPUTY PRESIDENT**

29 July 2009