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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

SURVEYORS (PRIVATE INDUSTRY) AWARD

ORDER BY CONSENT

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

CLAUSES 4, 5 AND 8 ARE VARIED; AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Surveyors (Private Industry) Award".

2. SCOPE

This award applies to the whole of Tasmania to any person or persons, or class of persons employed in surveying duties and, or other associated duties as hereinafter defined but not including:

Surveyors employed in Federal or State Government Departments or instrumentalities, Local Government Authorities or Port Authorities and/or Marine Boards; or surveyors employed by the owners or operators of a mine or mining operations as defined in the *Mines Inspection Act 1986*.

3. ARRANGEMENT

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4. DATE OF OPERATION

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

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Surveyors (Private Industry) Award No. 1 of 2003 (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 employed in the industry specified in Clause 2 -Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:

the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and the officers of that organisation and their members who are 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.

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7. DEFINITIONS

CLASSIFICATIONS

'Survey Hand' -C1 - 82% Relativity

A Survey Hand is an employee who holds no relevant qualification but is capable of assisting the survey or survey technician.

Their duties include:

- Assisting in field work under direct supervision.
- Be aware of safe working practices.
- Be eligible to/or hold a drivers licence.
- Be able to maintain and clean basic survey equipment.
- Be able to perform general office duties under instruction.
- Be able to work in a team environment.

'Technical Assistant – Survey'

C2 - On commencement	83%	Relativity
After 1 years experience	88%	Relativity
After 2 years experience	95%	Relativity
After 3 years experience	100%	Relativity

A Technical Assistant - Survey means a person who has completed Year 12 or Year 11 and is eligible to enter a Bridging Course for the purposes of gaining enrolment into a study programme leading to a recognised secondary or tertiary award or has knowledge and is exercising the skill deemed to be the equivalent thereof.

It is likely that employees at this level will have commenced formal training in relevant courses of study.

Their duties may include, under supervision the following:

- Setting up of surveying instruments.
- Straight forward drafting or mapping tasks.
- Straight forward technical tasks in the field.

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'Trainee Survey Technician' - C3

Level 1 - 105% Relativity

Qualifications: Successful completion of:

3 appropriate modules towards an advanced certificate, or
3 appropriate modules towards an Associate Diploma, or
Training deemed equivalent to above.

Indicative Tasks:

- The competent reduction of levels.
- The accurate transfer to survey information.
- Basic plan preparation.
- Accurate angular observation.
- Efficient field techniques.
- The understanding of EDM measurement and booking techniques.
- Responsible for the acquisition of data in the field under the immediate supervision of a qualified surveyor or his appointee.
- Works in a team environment or under routine supervision.
- Basic understanding of the down loading of field data into computers.

Level 2 - 110% Relativity

Qualifications: Successful completion of:

6 appropriate modules towards an Advanced Certificate, or
6 appropriate modules towards an Associate Diploma, or
Training deemed equivalent to the above.

Indicative Tasks:

Similar to that applicable to a Level 1 Trainee Survey Technician (as defined) although employees at this level would work under limited supervision either individually or in a team environment. This will require the exercise of skill and judgement in excess of that required at Level 1.

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Level 3 - 115% Relativity

Qualifications: Successful completion of:

9 appropriate modules towards an Advanced Certificate, or
9 appropriate modules towards an Associate Diploma, or
Training deemed equivalent to the above.

Indicative Tasks:

Similar to that applicable to a Level 1 and 2 Trainee Survey Technician (as defined). However judgement and skill levels will be at a commensurately higher level and cross-skilling in technical fields will be required.

'Survey Technician' - C4 - 125% Relativity

Qualifications: Successful completion of:

12 appropriate modules towards Advanced Certificate, or
12 appropriate modules towards an Associate Diploma, or
Training deemed equivalent to the above.

Such employees work above and beyond a trainee survey technician (as defined) and to the level of their training:

- (a) provides technical guidance or advice within the scope of this level;
- (b) provides limited technical reports on assigned tasks as directed within the scope to this level;
- (c) has an overall knowledge and understanding of the principles of the systems and equipment on which they are required to carry out their tasks.

Indicative Tasks:

- Carries out limited engineering surveys to the required accuracy under immediate supervision or directions.
- Prepares basic plans using either manual or computer-based methods under supervision.
- Survey computations.
- Be able to use survey-based computer programs.

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'Survey Technician Senior' - C5 - 130% Relativity

Part-time Party Leader (Graduate Entry Point)

Qualifications: Has successfully completed:

4 year degree, or
15 modules of an Associate Diploma together with 3 years practical experience.

A Survey Technician Senior works above and beyond an employee at C4 - Survey Technician (as defined) and to the level of their training:

- (a) provides technical guidance or advice within the scope of this level;
- (b) prepares reports of a technical nature on specific tasks or assignments as directed or within the scope of discretion at this level;
- (c) has an overall knowledge and understanding of the principles of the systems and equipment on which they are required to carry out their tasks;
- (d) assists in the provision of on-the-job training in conjunction with supervisors and trainers.

Indicative Tasks:

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

- Carry out surveys to the required accuracy under supervision or direction.
- Prepare plans, using either manual or computer-based methods under supervision.
- Survey computations.
- Obtain survey information and interpret this information for drawing, computation or survey needs.
- Have basic knowledge of civil engineering, geology, soil and fauna/environmental aspects relevant for surveying practice.
- Be able to use survey-based computer programmes.

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'Party Leader Surveyor/Technical Surveyor (Level 1)' - C6 - 135% Relativity

Qualifications:

Has successfully completed the 3rd year part-time (or 22 modules) of an Associate Diploma; or

the equivalent level of accredited training and has had at least 3 years practical experience.

Party Leader Surveyor (Supervised)/Technical Surveyor is an employee who:

- Whilst working under controlled supervision, gathers or sets out field data and collates the resultant or separate information using computer techniques.
- Prepares work sheets for engineering surveys and applies all relevant checks to ensure quality of computed work.
- Under the direction of a Licensed Surveyor, gathers cadastral information for analysis.
- Prepares plans to a standard where they would be acceptable to the Office of Titles.
- Clearly sets out all computations and checks to cadastral work for checking by a Licensed Surveyor.
- Assists in the training of staff, maintenance of equipment and office records.
- Assists in the development of new techniques and procedures.

'Party Leader/Associate Surveyor Level II' - C7 -145% Relativity

Qualifications:

Has successfully completed an Associate Diploma or the equivalent level of accredited training. Such employees shall have at least 4 years practical experience including at least 3 years in the officers speciality.

A Survey Party Leader/Associate Surveyor Level II whilst not requiring supervision for daily tasks is still responsible to a Licensed Surveyor when performing any survey where file definition is required.

Duties which may be expected of such an employee are:

- Under the direction of a co-ordinator, be able to perform surveys to the required accuracy for the various types of surveys.
- Interpret survey information to enable field surveys to relate to previous surveys.

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- Make adoptions for boundary definitions and present these adoptions with evidence to a Licensed Surveyor for ratification.
- Prepare reports on the manner in which the surveys were conducted and justification of results.

'Associate Diploma without Experience'

The salary relativity for a person holding an Associate Diploma (or equivalent) but with less than 4 years practical experience shall be as follows:

On Commencement	105% Relativity
After 1 years experience	115% Relativity
After 2 years experience	130% Relativity
After 3 years experience	135% Relativity
After 4 years experience	145% Relativity

'Experienced Surveyor' - C8 - 150% Relativity

An Experienced Surveyor means an employee who has completed:

- A 4 year degree; or
- An employee who has completed additional accredited education and training so as to reach a standard equivalent to a four year degree and who is required to perform the work set out below.

An Experienced Surveyor whilst not requiring supervision in the performance of his duties is still responsible to a Licensed Surveyor when performing any survey where title definition is required.

Duties which may be expected of such an employee are:

- To the level of their experience co-ordinate other field parties in the performance of their duties.
- To carry out field surveys to a professional standard and to the satisfaction of the employer.
- To show initiative on improving field and office techniques.
- Manage computer files and job flow patterns.
- To ensure quality assurance for the areas directly under their control.
- Prepare detailed reports on survey results.

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'Professional Surveyor' - C9 -160% relativity

A Professional Surveyor means an employee who has completed:

- A 4 year degree; or
- An employee who has completed additional accredited education and training so as to reach a standard equivalent for a four year degree and who is required to perform the work set out below.

A Professional Surveyor at C9 shall include an employee who has successfully completed all necessary requirements of the Land Surveyors Board for Registration as a Cadastral Surveyor. Such a qualification however is not mandatory for work at this level. Requirements of such an employee would be to be proficient in aspects of law relating to surveying and be actively involved in maintaining their knowledge to include any changes in legislation and technology.

An employee at this level would require a mature approach to the completion of survey projects and be able to adequately supervise those under their control.

Regular checks on Quality Control Procedures in place for the surveyors place of employment. Supervision received are in broad objectives where communication with management will enable the surveyor to determine whether targets are being reached.

'Project Manager/Surveyor - Special Projects Level 1' - C10 - 180% Relativity

Qualifications:

Has successfully completed:

- a 4 year degree to qualify as a Professional Surveyor; or
- an employee who has completed additional accredited education and training so as to reach a standard equivalent to a four year degree and who is required to perform the work set out below.

Duties:

An employee at this level requires the application of mature surveying knowledge with scope for individual accomplishment and co-ordination of difficult and responsible surveying alignments. The occupant deals with problems for which it is necessary to modify established guides and devise new approaches.

They may make some original contribution and/or supply new approaches and techniques to design or development of equipment of specific aspects of products.

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Recommendations and Decisions:

Their recommendations may be reviewed for soundness of judgement but are usually regarded as technically accurate and feasible. The occupant makes responsible decisions on matters assigned, including the establishment of surveying standards and procedures.

Supervision Received:

Work is carried out within broad guidelines requiring conformity with overall objectives, relative priorities and necessary co-operation with other units. Informed technical guidance may be available.

Supervision Exercised:

The occupant outlines and assigns work and reviews it for technical accuracy and adequacy. They may plan, direct and co-ordinate the work of other professional surveyors and may also supervise other professional and technical staff.

'Manager Business/Specialist' - C11 - 210% Relativity

Qualifications:

Has successfully completed:

- a 4 year degree to qualify as a Professional Surveyor; or
- an employee who has completed accredited education and training so as to reach a standard equivalent to a four year degree and who is required to perform the work set out below.

Duties:

An employee at this level is required to perform professional surveying work involving considerable independence in approach and demanding a considerable degree of originality, ingenuity and judgement. The occupant requires knowledge of more than one field of surveying or is an expert in a particular field of surveying. The occupant initiates and/or participates in short and long range planning and makes independent decisions on surveying policies and procedures within an overall program. They give technical advice to management and operating departments. They make take detailed technical responsibility for product development and the development and provision of specialised survey systems, facilities and functions.

The occupant co-ordinates work programs and directs or advises on the use of material and/or equipment.

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Recommendations and Decisions

The occupant makes responsible decisions not usually subject to technical review. The occupant decides courses of action necessary to expedite the successful accomplishment of assigned projects and may make recommendations involving large sums of money or long-range objectives.

Supervision Received

Duties are assigned only in terms of broad objectives and are reviewed for policy, soundness of approach, accomplishment and general effectiveness.

Supervision Exercised

The occupant supervises a group or groups including professional surveyors and other staff and/or exercises authority and technical control over a group of qualified professional personnel engaged, in both instances, in complex survey applications.

'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.

8. SALARIES

1. ADULTS

Classification	Proposed Relativity at the end of the Minimum Rate Adjustment process %	Base Rate \$	Supplementary Payment		Total Rate \$
			(A) \$	(B) \$	
C1 Survey Hand	82	15572	2217	7384	25173
C2 Technical Assistant - Survey					
On commencement	83	15762	2244	7384	25390
After 1 years experience	88	16712	2380	7384	26476
After 2 years experience	95	18041	2569	7384	27994
After 3 years experience	100	18990	2704	7488	29182
C3 Trainee Survey Technician					
Level 1	105	19940	2839	7488	30267
Level 2	110	20889	2974	7488	31351
Level 3	115	21839	3110	7384	32333

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C4	Survey Technician	125	23738	3380	7488	34606
C5	Survey Technician Senior Part-time Party Leader (Graduate Entry Point)	130	24687	1773	7384	33844
C6	Party Leader Surveyor/ Technical Surveyor Level I	135	25637	2557	7488	35682
C7						
(i)	Party Leader/Associate Surveyor Level II	145	27536	3333	7436	38305
(ii)	Associate Diploma without experience					
	On commencement	105	19940	2413	7488	29841
	After 1 years experience	115	21839	2643	7384	31866
	After 2 years experience	130	24687	1773	7384	33844
	After 3 years experience	135	25637	2557	7488	35682
	After 4 years experience	145	27536	3333	7436	38305
C8	Experienced Surveyor	150	28485	3197	7436	39118
C9	Professional Surveyor	160	30384	3786	7332	41502
C10	Project Manager/Surveyor - Special Projects - Level I	180	34182	4103	7280	45565
C11	Business Manager/ Specialist	210	39879	3288	7280	50447

2. JUNIORS

The minimum annual wage rate to be paid to a junior employee shall be as follows:

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.

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(a) Survey Hand

	Percentage of classification level C1 %
Under 16 years	60
16 - 17 years	70
17 - 18 years	80
18 - 19 years	90
19 - 20 years	100

(b) Technical Assistant

	Percentage of classification level C2 After 3 years experience %
17 years and under	52
18 - 19 years	62
19 - 20 years	75
20 years	88

3. SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

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(b) For the purposes of this subclause:

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

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
 - (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.
- (e) Lodgment of assessment instrument
- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
 - (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.
- (f) Review of assessment
- The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.
- (g) Other terms and conditions of employment
- Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.
- (h) Workplace adjustment
- An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.
- (i) Trial Period
- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

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- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

4. 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 8 - subclause 3 - Supported Wage System is \$467.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

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(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T11548 of 2004) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

All employees (other than casuals) shall be allowed a period of four weeks annual leave exclusive of public holidays after twelve months continuous service.

(b) Payment for Period of Leave

All employees before going on leave shall be paid the amount of salary they would have received in respect of the ordinary time which they would have worked had they not been on leave during the relevant period.

(c) Annual Leave Loading

An employee proceeding on annual leave shall be paid a loading of 17.5 per cent in addition to the payment prescribed in subclause (b) herein.

Such loading shall not be payable on pro rata leave on termination.

Provided that the loading shall not exceed an amount equivalent to a 17.5 per cent loading calculated on the salary of a Party Leader/Associate Surveyor Level II (C7(i)).

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(d) Proportionate Leave on Termination of Service

If after one completed month of service in any 12 monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid 12.67 hours for each completed month of continuous service.

(e) Close Down

An employer may close down his establishment, or part thereof, for a period of not less than nine consecutive days including non working days and allow the balance of the annual leave due to the employee to be taken as agreed.

In such cases, the granting and taking of annual leave shall be subject to the agreement of the employer and the majority of employees in the establishment, or part thereof, respectively, and before asking the employees concerned for the agreement the employer shall advise the employees of the proposed date of the close down and the details concerning the taking of the balance of any outstanding annual leave.

10. CASUALS

- (a) A casual employee means an employee specifically engaged on a casual basis.
- (b) A casual employee shall be paid per hour one thirty eighth of the weekly rate prescribed for the work which he performs. In addition thereto a casual employee shall receive a 20% loading in lieu of annual leave, sick leave and public holidays.

11. CERTIFICATE OF SERVICE

Upon termination of employment the employer, when requested by the employee, shall provide the employee with a certificate of service stating length of service, duties performed and classification of office.

12. COMPASSIONATE LEAVE

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

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

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

13. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries and those establishments covered by Clause 2 - Scope, and to enhance the career opportunities and job security of employees in these industries and establishments.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

14. CONTRACT OF EMPLOYMENT

- (a)
 - (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
 - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
 - (iii) Any direction issued by an employer pursuant to subclause (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (b) Except in the case of a casual, whose engagement shall be by the hour, the contract of service of every employee shall be terminable by two weeks' notice on either side given on any day or, in the event of such notice not being given, by the payment of two weeks' pay by the employer, or the forfeiture of payment of two weeks' pay by the employee.

PROVIDED that in a case whereby an employee is terminated for misconduct which would justify instant dismissal, wages shall be paid up to the time of dismissal only.

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- (c) Within one month of the employment of an employee under this award, an employee shall, if he so requests, be advised by his employer of the award classification and the details of the total remuneration applicable to him and whether or not and over what period of time it includes any element compensating him in whole or in part for overtime work or work on Sundays or holidays. Further, on request, an employer shall advise an employee of other details of the conditions of employment applicable to him.

If an employee requests that details of his employment conditions be provided in writing the employer shall take all reasonable steps to satisfy the request.

- (d) Consistent with the structural efficiency principle, the employees undertake to carry out as required a wider range of tasks and duties, provided they are competent and trained to carry out such duties.
- (e) The employer may in the event of misconduct suspend an employee without pay. The maximum period of suspension shall be one week. Prior to the implementation of a suspension, the union shall be advised of the intention to undertake such suspension. In the event that a union official cannot be contacted, the suspension will not be implemented for a period of at least 24 hours.

Should the employee not agree to the suspension the union shall have the right to refer the matter to the Industrial Commission. If upon examination the Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term of or rescind the suspension. Nothing in this subclause shall affect the right of the employer to dismiss an employee in accordance with the previous subclause.

15. DISPUTES AND GRIEVANCE PROCEDURE

Subject to the provisions of the Tasmanian *Industrial Relations Act 1984*, any dispute or claim arising out of or relating to this award shall be dealt with in the following manner.

- (a) The matter shall first be discussed between the employee and his/her work supervisor.
- (b) If not settled the matter shall be discussed between the employee's delegate and work supervisor and the manager.
- (c) If not settled the matter shall be referred to the Branch Secretary of the union for discussions between the appropriate union representatives and management representatives.
- (d) If the matter is not settled it shall be submitted to the Tasmanian Industrial Commission for determination.

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- (e) While the above procedure is followed, industrial action will be avoided and the "status quo" in existence prior to the dispute shall be maintained.
- (f) Where a bona fide safety issue is involved, the parties shall give immediate priority to resolving the issue. In resolving the issue, the parties shall give regard to recognise safety standards and any relevant legislation.

16. 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 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 which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

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17. FARES, TRAVELLING EXPENSES AND TRAVELLING TIME

- (a) An employee shall be reimbursed all reasonable expenses incurred whilst travelling on his employer's business including where appropriate excess travelling time not provided for by Clause 19 - Hours of Work, subclause (b).

'Excess travelling time' shall mean time spent in travelling which is in excess of the time normally taken by an employee in travelling from home to work and return.

- (b) Where an employee is required to use his private vehicle on his employer's business, he shall receive compensation at the rate of not less than 30 cents per km. Provided that no payment shall be made for travelling from an employee's home to his normal starting point.

18. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) 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), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) All work performed on a public holiday shall be deemed to be work in excess or outside of normal hours of duty and shall be paid or compensated for in accordance with Clause 19 - Hours of Work, subclause (b).

19. HOURS OF WORK

- (a) The ordinary hours of work shall not exceed an average of 228 hours in a 42 consecutive day cycle.

- (b) An employer shall compensate an employee for all authorised time worked regularly in excess of normal hours of duty by:

- (i) granting time off in lieu; or
- (ii) taking this factor into account in the fixation of annual remuneration; or
- (iii) payment for such excess hours at the rate of time and a half; or in the case of Sundays and Public Holidays at the rate of double time; or
- (iv) granting other compensation such as additional leave or special additional remuneration;

as may be mutually agreed.

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20. LEAVE RESERVED

Leave is reserved to the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union in respect of the following:

- Definition of casual employees;
- Salaries for Engineering and Mining Surveyors;
- Hours of Work.

21. MEAL BREAK

Not less than thirty minutes nor more than one hour shall be allowed for a meal break each day.

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.

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or

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(iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Maternity Leave

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

(ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

(iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

(i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

(i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

(ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).

(iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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(iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

(i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

(1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(2) the period may be further lengthened by agreement between the employer and the employee.

(ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

(i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

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(i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

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- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

(c) Eligibility for Paternity Leave

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

- (i) an unbroken period of up to one week at the time of confinement of his spouse;

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

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

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(f) Variation of Period of Paternity Leave

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

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

(k) Return to Work after Paternity Leave

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

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

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

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

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

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

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

(c) Eligibility

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

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

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

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(d) Certification

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

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.

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- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

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(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

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

PART D – PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

'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.

'Spouse' includes a de facto spouse.

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

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

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

(b) Entitlement

With the agreement of the employer:

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- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
 - (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
 - (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
 - (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
 - (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.
- (d) Effect of Part-time Employment on Continuous Service
- Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.
- (e) Pro Rata Entitlements
- Subject to the provisions of this part and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.
- (f) Transitional Arrangements - Annual Leave
- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

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- (ii) (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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(i) Termination of Employment

- (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

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(m) Replacement Employees

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

23. PART-TIME EMPLOYEES

- (a) A part-time employee is an employee engaged to regularly work less hours per day or week than a full-time weekly employee.
- (b) Part-time employees shall be paid per hour one thirty-eighth of the weekly rate prescribed for the work which he performs.
- (c) Part-time employees shall be entitled to the annual leave, holidays with pay and sick leave as prescribed in Clause 9 - Annual Leave, Clause 18 - Holidays with Pay, and Clause 28 - Sick Leave, provided that payment therefore shall be made at the rate normally paid to such employees for a similar period of time worked.

24. PAYMENT OF SALARIES

Salaries may be paid weekly, fortnightly, or monthly at the discretion of the employer in cash, by cheque or by direct bank transfer into an account nominated by the employee.

25. PROTECTIVE EQUIPMENT

The employer shall have available a sufficient supply of protective equipment (as, for example, glasses, ear protectors, gumboots, helmets, overalls, dust coats or other efficient substitutes thereof) for use by employees when employed on work for which protective equipment is reasonably necessary.

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26. RIGHT OF ENTRY

A duly accredited representative of the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union shall be permitted to interview any employee covered by this award on legitimate union business on the business premises of his employer provided that it does not materially disrupt the work process.

PROVIDED that the duly accredited representative shall give the employer reasonable notice of his/her intention to exercise his rights under this clause.

27. SICK LEAVE

- (a) An employee other than one engaged as a casual who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) the employee shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) the employee shall, within 30 minutes of the commencement of such absence, inform the employer of his 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;
 - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) the employee shall not be entitled in any year to sick leave credit in excess of two weeks of ordinary working time.

PROVIDED that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed month of service with the employer.

- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

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28. SUPERANNUATION

- (a) As from the first pay period to commence on or after 1 January 1989 employers shall, in respect of all eligible employees contribute an amount of 3% of each employees' ordinary pay each week into an approved superannuation fund.

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.

- (b) For the purpose of this clause:

'Approved Fund' means TASPLAN or a fund which complies with the Insurance and Superannuation Commission requirements and is approved in writing by the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union.

'Ordinary Weekly Salary' means the normal weekly salary as expressed in Clause 8 - Salaries of this award.

'Eligible Employee' means an employee with a minimum of two weeks service in the vase of weekly and part-time employees.

In the case of casual employees, a superannuation payment equivalent to 3% of ordinary time earnings shall be made on each occasion a casual employee works at least 76 hours in each calendar month.

P C Shelley
DEPUTY PRESIDENT

1 September 2004