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TASMANIAN INDUSTRIAL COMMISSION

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)
Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)
Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)
Private and Public Sector Awards

FULL BENCH:

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

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

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

FULL BENCH:

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

Award variation – union name change - application approved

MISCELLANEOUS WORKERS AWARD

ORDER BY CONSENT

**No. 2 of 2004
(Consolidated)**

CLAUSES 6, 7, 8, 9, 13, 24, 29 and 33 ARE VARIED, AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Miscellaneous Workers Award".

2. SCOPE

- (a) Subject to the exceptions and modifications prescribed elsewhere this award shall apply to the work performed by private employees classified as follows:
1. Caretaker
 2. Janitor
 3. General Attendant
 4. Lift Attendant
 5. Tea Attendant
 6. Cleaner
 7. Groundsman or Yardsman
 8. Library Attendant
 9. Vehicle Cleaner
 10. Domestic
- (b) This award shall not apply to a private employee who is engaged within an industry where an award or registered Industrial Agreement applies containing a classification of employee embracing the same or similar work as envisaged by the scope and definitions set out in this award.
- (c) This award shall not have any application to employees of employers in the industry of mining. For the purposes of this exclusion "mine" or "mining" shall have the same meaning as similar expressions contained in the *Mines Inspection Act 1968*.

3. ARRANGEMENT

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CONDITIONS OF EMPLOYMENT - DIVISION A - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATIONS OF CARETAKER, JANITOR, GENERAL ATTENDANT, LIFT ATTENDANT, TEA ATTENDANT, CLEANER, GROUNDSMAN OR YARDMAN, VEHICLE CLEANER AND DOMESTIC

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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. SUPERSESION AND SAVINGS

This award incorporates and supersedes Miscellaneous Workers Award No. 2 of 2003 (Consolidated), No. 3 of 2003 and No 1 of 2004.

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 private employers (whether members of a Registered Organisation or not) who employ persons in the occupations specified in Clause 2 - Scope;
- (b) all private employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the occupations specified in Clause 2 - Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:

the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch 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:
 - (i) the Tasmanian Chamber of Commerce and Industry Limited; and
 - (ii) Australian Retailers Association - Tasmania Division.

7. DEFINITIONS

For the purposes of all Divisions:

'Part-time employee' is one engaged to regularly work for less hours per day or week than those prescribed for full-time employees.

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'Casual employee' means any person who is employed on a casual basis and includes any person who is employed for a period not exceeding five days at any one time, and shall not include an employee as defined in subclause (a) hereof.

'Union' means the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch.

'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.

Nothing in this award shall be taken to imply that an employee cannot be engaged to carry out work covered by more than one of the occupations as specified in Clause 2 - Scope.

For the purposes only of Division A - Employees engaged in accordance with Clause 2 - Scope in the occupations of Caretaker, Janitor, General Attendant, Lift Attendant, Tea Attendant, Cleaner, Groundsman or Yardman, Vehicle Cleaner and Domestic:

'Level 1 employee' - (Wage relativity to Level 3 employee = 87.4%)

(a) Point of Entry

A new employee or adult employee previously engaged as a junior in one of the occupations of vehicle cleaner, domestic or general attendant.

(b) Induction Programme

A new employee at this level may undertake an internal induction programme which may include information on the enterprise, conditions of employment, introduction to other workers, training and career path opportunities, occupational health and safety, quality control, work and documentation procedures, personal presentation and use and care of machinery and/or equipment where relevant.

(c) Tasks/Duties/Responsibilities

An employee may be engaged in at least one of the following occupational groups:

GROUP A:

Occupations of Lift Attendant, Tea Attendant, Cleaner, Groundsman or Yardman, Vehicle Cleaner or Domestic

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform are the following:

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- Cleaning of buildings and properties.
- Cleaning of motor vehicles, including vehicles for hire.
- Household duties including cleaning, laundering, ironing, cooking and childminding;
- Maintenance of premises, grounds and/or general surroundings;
- Operation and attendance of lifts;
- Tea Attendance.

GROUP B:

A new employee with less than 4 weeks employment in the occupation of General Attendant, Utility Officer and/or Caretaker or Janitor

Subject to the provisions of Clause 16 - Contract of Employment, subclause (c) thereof, an employee in this occupational group shall remain at this level for a maximum employment period of 4 weeks.

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform during this initial 4 weeks of employment are the following:

- Attend and protect premises and surrounds to ensure their good order and convenient use including their cleaning and upkeep;
- General securing of premises and surrounds;
- Assist the public in the use of premises or facilities;
- General maintenance and handyman duties additionally maintaining appearance of buildings and grounds;
- Taking of messages.

(d) Promotional Criteria

With the exception of Group B occupations in this definition an employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable progression to the next level as a position becomes available.

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'Level 2 employee' - (Wage relativity to Level 3 employee = 92.4%)

(a) Point of Entry

- (i) Level 1 employee who satisfies the promotional criteria of that level or, in the case of an employee engaged under Group B - Occupations of Level 1, has satisfactorily completed 4 weeks of employment.
- (ii) Completion of required training module.

(b) Tasks/Duties/Responsibilities

An employee may be engaged in one of the following occupational groups:

GROUP A:

Occupations of Lift Attendant, Tea Attendant, Cleaner, Groundsman or Yardman, Vehicle Cleaner of Domestic

An employee at this level shall utilise the skills of a Level 1 employee in occupation Group A and in addition utilise specialist skills. Indicative of the tasks/duties and responsibilities an employee may be required to perform at this level and in this group of occupations include the following:

- Ordering and receiving of supplies and materials in connection with the cleaning of building and properties and/or motor vehicles (including vehicles for hire);
- Specialised cleaning of carpet, upholstery and furnishings using hot water extraction machines or shampooing machines requiring advanced operational skills;
- Steam and pressure cleaning of buildings using mechanical machines emitting steam under pressure requiring advanced operational skills;
- Window cleaning from a suspended apparatus.
- General repairs and renovation, not requiring trade qualifications for their performance, in the maintenance of premises, grounds and/or general surroundings.

GROUP B:

An employee with at least 4 weeks employment in the occupations of General Attendant, Utility officer and/or Caretaker or Janitor

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform are the following:

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- Attend and protect premises and surrounds to ensure their good order and convenient use including their cleaning and upkeep;
- General securing of premises and surrounds;
- Assist the public in the use of premises or facilities;
- General maintenance and handyman duties and may, in addition, include maintaining the appearance of buildings and grounds;
- Taking of messages.

(c) Promotional Criteria

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

'Level 3 Employee' - (Wage relativity = 100%)

(a) Point of Entry

- (i) Level 2 employee.
- (ii) Completion of required training module.

(b) General

An employee who utilises the skills required of the Level 2 definition but at a more advanced level and in addition is appointed by the employer as the principal supervisor of employees at definition Levels 1 and 2.

(c) Tasks/Duties/Responsibilities

In addition to the tasks of a Level 2 employee as defined, the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- Use of a well developed level of interpersonal and communicative skills;
- Exercises discretion within the scope of this level;
- Coordination of other employees at Levels 1 and 2;
- Supervises, directs and guides other employees at Levels 1 and 2 and assists in the provision of training and induction;

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- Specialised maintenance duties that may require the holding of a trades certificate, including repairs to property, premises and maintenance of grounds and surrounds;
- Maintenance of all records and administrative tasks incidental to main duties.

For the purposes only of Division B - Employees engaged in accordance with Clause 2 - Scope in the occupation of Library Attendant

'Library Attendant Level 1'- (Wage relativity to Library Supervisor Level 4 = 78%)

(a) Point of Entry

A new employee or adult employee with less than 4 weeks employment as a library attendant under this award.

(b) General

An employee remains in this position for up to 152 working hours during which time the employee shall undertake induction training to enable the employee to progress to the next grade subject to the satisfactory completion of the training programme.

(c) Training Programme

Induction training shall be provided as on-the-job training and may include information on the enterprise, conditions of employment, introduction to fellow workers, training and career path opportunities, work and documentation procedures, occupational health and safety, stock control procedures, liaison with industry representatives, familiarisation with security arrangements, basic operation of home viewing equipment and familiarisation with the operation of a video outlet and/or library.

An employee at this level performs routine duties to their level of training under general or direct supervision. Indicative of the tasks an employee at this level may be required to perform include the following:

- Setting up of displays;
- Liaison with customers and industry representatives under supervision;
- cleaning;
- basic keyboard operation and basic operation of computer software programmes under supervision;
- unpacking and packing of stock and maintenance of relevant records;
- presentation and maintenance of library stock;

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- transaction of money at the point of sale or hire under supervision;

(d) Promotional Criteria

An employee remains at this level for a period of 4 weeks employment undertaking structured training and on the satisfactory completion thereof shall progress to the next level.

'Library Attendant Level 2' - (Wage relativity to Library Supervisor Level 4 = 87.4%)

(a) Point of Entry

- (i) Satisfactory completion of 4 weeks (152 hours) employment inclusive of training at Library Attendant Level 1.
- (ii) An adult employee with more than 4 weeks employment experience as a Junior Library Attendant.
- (iii) Demonstrated and proven skills enabling the employee to satisfactorily perform the tasks of this level.

(b) Tasks/Duties/Responsibilities

An employee at this level shall perform all the tasks/duties of a Library Attendant Level 1 and in addition the indicative tasks/duties/responsibilities an employee at this level may perform are the following:

- liaison with customers including minor customer complaints and problems;
- transaction of money at the point of sale or hire and processing and balancing of all monies;
- basic computer and keyboard operation;
- basic knowledge of movies and technical trade journals;
- basic operation of home viewing equipment;
- basic arithmetical calculations with accuracy;
- cleaning and incidental repairs, including library stock;
- setting up and presentation;
- receipt and despatch of stock and maintenance of necessary records;
- packing and unpacking and maintaining stock on display;

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- security of premises under supervision;
- basic and incidental maintenance;
- control and supervise access of customers to library;
- demonstrate good verbal skills.

(c) Promotional Criteria

An employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable progression to the next level upon being required to perform within the criteria of the next level.

'Library Attendant Level 3'- (Wage relativity to Library Supervisor Level 4 = 92.4%)

(a) Point of Entry

- (i) Library Attendant Level 2;
- (ii) Completion of required training module.

(b) General

An employee at this level will utilise the skills of a Library Attendant Level 2 at a higher level of skill and responsibility and may include responsibility for the training and supervision of Level 1 and 2 employees within a work section.

An employee at this level shall also have a working knowledge of computers and computer programmes.

(c) Tasks/Duties/Responsibilities

In addition to the tasks of a Library Attendant Level 2 the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- keyboard and computer skills at a more advanced level than Level 2;
- reasonable working knowledge of movies and trade and technical journals to enable communication with distributors and customers on these matters;
- general knowledge of the operation of home viewing equipment and understanding of basic fault finding/correction;
- general knowledge of general maintenance and basic repairs;

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- more advanced verbal skills than Level 2 employees;
- design and layout of promotions and presentations;
- observe and undertake procedures for security of premises and oversee Level 1 and 2 employees in securing premises;
- receipt of orders and checking and dealing with problems arising therefrom;
- packing/unpacking of stock and maintaining necessary records and dealing with problems arising therefrom;
- controlling access and supervision of customers to library materials and resolving customer problems and complaints of a minor nature;
- arithmetic skills at a more advanced level than Level 2;
- processing and balancing of all monies up to the banking stage.

(d) Promotional Criteria

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

'Library Supervisor Level 4' - (Relativity 100%)

(a) Point of Entry

- (i) Library Attendant Level 3;
- (ii) Completion of required training modules.

(b) General

An employee at this level shall utilise skills and exercise responsibility at a level higher than that required of a Library Attendant Level 3 and in addition shall:

- understand and apply quality control techniques;
- exercise advanced interpersonal communication skills;
- exercise discretion within the scope of this Level;
- exercise advanced keyboard with computer skills;
- perform work under limited or general supervision either individually or within a team environment;

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- is appointed by the employer to supervise employees at Levels 1 to 3 and generally supervises the Library.

(c) Tasks/Duties/Responsibilities

In addition to the tasks of a Library Attendant Level 3 the indicative tasks, duties and responsibilities an employee at this level may perform are the following:

- customer liaison and dealing with and resolving complaints and problems;
- responsibility for stock controls;
- purchase and review of stock under management directions;
- training and induction of Level 1 to 3 employees;
- supervision of Level 1 to 3 employees;
- coordination of business promotions and associated advertising of stock;
- responsibility for the control of monies at the point of sale, including balancing and banking;
- responsibility for presentation and maintenance of stock;
- more advanced working knowledge of computer software programmes than a Library Attendant Level 3;
- may have advanced knowledge of repair, maintenance and operation of home viewing equipment including video cassettes and able to deal with related customer enquiries;
- resolution of basic computer errors.

8. WAGE RATES

DIVISION A - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATIONS OF CARETAKER, JANITOR, GENERAL ATTENDANT, LIFT ATTENDANT, TEA ATTENDANT, CLEANER, GROUNDSMAN OR YARDMAN, VEHICLE CLEANER AND DOMESTIC

Adults

Subject to Division C, subclause (a) Junior - Vehicle Cleaner, Domestic or General Attendant, the minimum weekly wage rate for an employee classified hereunder shall be the weekly wage rate assigned to that classification.

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	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Level 1 Employee (as defined)	87.4	364.60	142.00	506.60
Level 2 Employee (as defined)	92.4	385.50	142.00	527.50
Level 3 Employee (as defined)	100	417.20	144.00	561.20

**DIVISION B - EMPLOYEES ENGAGED IN ACCORDANCE WITH
CLAUSE 2 - SCOPE IN THE OCCUPATION OF LIBRARY ATTENDANT**

Adults

The minimum weekly wage rate for an adult employee classified hereunder shall be the weekly wage rate assigned to that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Library Attendant Level 1 (as defined)	78	325.40	142.00	467.40
Library Attendant Level 2 (as defined)	87.4	364.60	142.00	506.60
Library Attendant Level 3 (as defined)	92.4	385.50	142.00	527.50
Library Supervisor Level 4 (as defined)	100	417.20	144.00	561.20

DIVISION C - JUNIORS

(a) Junior - Vehicle Cleaner, Domestic or General Attendant

A junior employee who is engaged under the occupation of Vehicle Cleaner, Domestic or General Attendant shall in lieu of the weekly wage rate provided in Division A, subclause (a) - Adults be paid the following percentage of the weekly wage rate prescribed for a Level 1 Employee in Division A, subclause (a) - Adults until the employee attains the age of 21.

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	%
At 16 years of age	55
At 17 years of age	65
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95
At 21 years of age	100

PROVIDED that where more than one employee of this class is employed, no more than 50 per cent of those employees shall be engaged and paid as junior employees.

PROVIDED FURTHER that an employee engaged as a general attendant prior to 1 August 1992 shall be entitled to the rate of pay prescribed for an adult employee.

(b) Junior - Library Attendant

An employee classified as a junior library attendant shall be paid the following percentage of the total weekly wage prescribed for classification Library Attendant Level 2 in Division B, subclause (a) - Adults.

	%
At 16 years of age	55
At 17 years of age	65
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95
At 21 years of age	100

PROVIDED that where more than one employee of this class is employed, no more than 50 per cent of those employees shall be employed and paid as junior employees.

DIVISION D - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

(b) For the purposes of this division:

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

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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

(e) Lodgment of assessment instrument

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

(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.

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(g) Other terms and conditions of employment

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

(h) Workplace adjustment

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

(i) Trial Period

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

DIVISION E – MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Division D - Supported Wage System is \$467.40 per week.

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- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)
 - (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.
- (c) How the Minimum Wage Applies to Juniors
- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
 - (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i)
- (d) Application of Minimum Wage to Certain Employees

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

- (e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T.11548 of 2004) and all previous safety net and state wage case adjustments.

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9. ALLOWANCES

(a) Leading Hand Allowance

An employee who is appointed by the employer as a leading hand shall be paid per week the following applicable allowance in addition to the classification rate:

	Amount per Week \$
(i) In charge of 5 or less employees	15.40
(ii) In charge of 6 to 10 employees	19.80
(iii) In charge of more than 10 employees	25.30

PROVIDED that the leading hand allowances prescribed by this subclause shall not be paid to employees engaged as a Level 3 employee (as defined) of Division A or Library Supervisor Level 4 (as defined) of Division B as prescribed in Clause 7 - Definitions.

(b) Excess Fares Allowance

Employees engaged on any day or shift which is worked in two periods shall be paid an excess fares allowance of \$2.50 per day.

(c) First Aid Allowance

Where an employee is a qualified first aid attendant and is authorised to carry out the duties of a qualified first aid attendant, the employee shall be paid an additional amount of \$7.20 per week.

(d) Meal Allowance

An employee who is entitled to a meal allowance pursuant to Clause 21 - Overtime of Division A and Clause 39 - Overtime of Division B shall be paid an amount of \$12.70 for each occasion when the allowance is payable.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days leave, exclusive of days prescribed as holidays in Clause 18 - Holidays with Pay of this award, shall be allowed annually to an employee other than a casual employee (as defined) after 12 months continuous service (less the period of annual leave).

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(b) Calculation of Continuous Service

- (i) 12 months continuous service, for the purposes of this award shall mean 12 months from the commencement of employment. Such 12 months shall not be affected by the number of hours worked each week.
- (ii) Continuous service shall not be deemed to have been broken because of:
 - (1) absences of up to 91 days resulting from accidents, or illnesses which are covered by medical certificates, in accordance with Clause 32 - Sick Leave hereof;
 - (2) absences of up to one month for any cause for which leave has been granted by the employer.

(c) Time of Taking Leave

Annual leave shall be taken at a time mutually agreed upon by the employer and the employee and, in the absence of agreement, at a time fixed by the employer after at least one month's notice to the employee and within three months of the date when the annual leave became due.

Annual leave shall be taken within 12 months from the date when the right to annual leave accrued.

(d) Broken Leave

Annual leave shall be taken in one consecutive period or if the employer and employee agree, in two or more periods provided that:

- (i) one period shall not be less than 7 consecutive days i.e. 5 working days;
- (ii) there shall be a maximum of 5 single day periods in any 12 months.

(e) Payment for Period of Leave

- (i) Subject to the provisions of paragraph (ii) of this subclause, an employee before going on leave shall be paid the amount of wages he would have received in respect of the ordinary time which he would have worked had he not been on leave during the relevant period.
- (ii) In the event of an employee's weekly hours of work having varied in the period during which the annual leave has accrued the number of hours per week on which leave payments are calculated shall be the average number of hours per week worked during the said period of accrual.

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(f) Annual Leave Loading

- (i) In addition to the amount payable in accordance with subclause (e) hereof, an employee shall be entitled to be paid a leave loading equivalent to 17.5 per cent of his ordinary annual leave payment.
- (ii) An employee who terminates his services or is dismissed in accordance with the provisions of Clause 16 - Contract of Employment, subclause (e) shall not be entitled to any payment for leave loading on pro rata leave payable on termination.
- (iii) An employee with twelve months continuous service whose employment is terminated by the employer through no fault of the employee, shall, subject to (i) hereof be entitled to be paid pro rata leave loading.
- (iv) An employee with less than 12 months service whose employment is terminated by the employer for reasons other than those set out in Clause 16 - Contract of Employment, subclause (e) shall be entitled to be paid pro rata leave loading.

(g) Leave Allowed Before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/12 of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 18 - Holidays With Pay hereof.

(h) Payment in Lieu Prohibited

Payment in lieu of annual leave shall not be made by an employer nor accepted by an employee except in accordance with all the requirements of this clause.

- (i) An employee shall not work for any other employer covered by this award during the period he or she is on paid annual leave.

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(j) Annual Leave Record

Every employer shall keep or cause to be kept an annual leave record showing the date of commencement of employment, the date on which the last leave became due, and the date on which the last leave was taken.

(k) Proportionate Leave on termination of Service

Where an employee terminates his employment, or his employment is terminated by the employer before the expiration of any 12 monthly qualifying period, payment shall be made on the basis of:-

4/52 of a week's wages for each completed week of continuous service.

(l) 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 clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(vi) An employer shall record these short term annual leave arrangements in the time and wages book, pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

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11. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 32 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement.

Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
- (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

The term '**immediate family**' includes:

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

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- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

(c) Grievance Process

Clause 26 - Reference of Disputes also applies to a dispute about the operation or effect of this clause.

12. CARETAKERS OR JANITORS

- (a) Caretakers and/or Janitors may be called upon to perform lift and boiler attendant duties as part of their duties.
- (b) In addition to the weekly rate prescribed in Clause 8 - Wage Rates, resident employees classified in accordance with this award shall receive free living quarters, light, power and fuel.

13. CASUAL AND PART-TIME EMPLOYEES

- (a) A part-time employee (as defined) shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs, plus 15 per cent.
- (b) A casual employee (as defined) shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs, plus 33 1/3 per cent.
- (c) A casual employee (as defined) shall be excluded from Clause 10 - Annual Leave and Clause 32 - Sick Leave of this award.
- (d) Hourly rates for casual employees (as defined) and part-time employees (as defined) shall be calculated to the nearest whole cent, fractions of less than 0.5 cents being disregarded.
- (e) The minimum start for casual employees (as defined) and part time employees (as defined) shall be two hours.

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PROVIDED that in exceptional circumstances the employer, with the agreement in writing from the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, may engage employees for a lesser number of hours than two hours as prescribed.

- (f) Part-time employees (as defined) may agree with their employer that their weekly hours be reduced in proportion to the reduction in ordinary hours occurring for full time employees. Where such agreement is made the provisions of Clause 19 - Hours of Work shall apply.

14. 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 days off.

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

For the purposes 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.

15. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to cooperating positively to increase the efficiency, productivity and competitiveness of the establishments engaging employees in occupations covered by Clause 2 - Scope to enhance the career opportunities and job security of these employees.
- (b) Subject to the provisions of any other awards regulating employment in the enterprise each enterprise shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise. Measures raised by the employer, employees and the union for consideration with the objectives of subclause (a) hereof shall be processed through that consultative mechanism and procedures.

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16. CONTRACT OF EMPLOYMENT

- (a) Except in the case of casual employees (as defined), employment under this award shall be by the week.
- (b) Casual employees (as defined) shall be engaged by the hour.
- (c) Except in the case of casual employees (as defined), employment may be terminated by the giving of one week's notice by either party, or the payment or forfeiture of one week's wages as the case may be.

PROVIDED that during the first four weeks of employment the employment may be terminated by the giving of one hour's notice by either party or by the payment or forfeiture of one hour's pay as the case may be.

- (d) Casual employment may be terminated by one hour's notice.
- (e) Nothing in this clause shall limit the right of the employer to instantly dismiss an employee for malingering, misconduct or neglect of duty.

PROVIDED that such malingering, misconduct or neglect of duty warrants instant dismissal, in which case wages shall be paid up to the time of dismissal only.

- (f)
 - (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 deskilling.
 - (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 paragraphs (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (g) The employer, in the event of misconduct, may suspend an employee without pay. The maximum period of suspension shall be one week. Should the employee not agree to the suspension the union may refer the matter to the Tasmanian Industrial Commission. If, upon examination, the Tasmanian Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term or rescind the suspension.

Prior to the suspension the matter shall be discussed with an official of the union or written notification shall be provided to the union. Where written means of notifying the employer's intentions is used, the employer shall not implement the suspension for twenty-four hours after the union would reasonably have been expected to receive such notification.

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PROVIDED that in exceptional circumstances, the suspension may be implemented immediately.

17. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be negotiated between the parties.
- (b) An agreement shall be subject to the following requirements:
 - (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union must be a party to the 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 of the agreement may be resolved.
- (d) An agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

18. HOLIDAYS WITH PAY

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

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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.

PROVIDED that employees classified in accordance with this award shall observe the same Holidays with Pay as are observed by the majority of employees in the establishment in which they are employed.

PROVIDED FURTHER that where a holiday with pay as prescribed in subclause (a) hereof falls on a Saturday, Sunday or Rostered Day Off and is observed on a Saturday, Sunday or Rostered Day Off, the next week day not being a paid holiday shall be observed in lieu.

- (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 with pay mentioned in subclause (a) hereof shall be at the rates prescribed elsewhere in this award.
- (d) Subject to agreement being reached between the employer and employee/s concerned, any of the holidays with pay mentioned in subclause (a) hereof may be worked at ordinary time and another working day substituted for the holiday concerned.

Such substitute day shall be paid in accordance with subclauses (b) or (c) of this clause.

- (e) Subject to agreement being reached between the employee and the employer, 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 taken at such time as is agreed.

19. HOURS OF WORK

- (a) The ordinary hours of work shall be an average of 38 per week to be worked in not more than 8 hours on any day, but may be worked in one or two periods, on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.

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In the case of resident caretakers, resident janitors or domestics such ordinary hours may be worked within six days.

- (b) The method of implementation of the 38 hour week may be agreed to be any of the following:
- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one week day on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

At each site an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

PROVIDED that circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.

- (c) Agreements reached on the method of implementation of the 38 hour working week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and be available for inspection in accordance with the provisions of the *Industrial Relations Act 1984*.

PROVIDED that in the absence of agreement on the implementation of the 38 hour week the procedure in Clause 26 - Reference of Disputes shall apply.

- (d) Subject to subclauses (a) and (b) hereof, work may be performed at such hours as may be agreed upon by the employer and employees concerned and be worked on any day of the week including Saturdays and Sundays, in such a manner that ensures the employee shall have at least two consecutive days off duty in each week subject to Clause 21 - Overtime. These days off shall be in addition to any time off arising out of the method of working the 38 hour week.
- (e) In the case of day workers the ordinary hours of work prescribed by this clause shall extend from 6.30 am to 6.00 pm.
- (f) In the case of shift workers, the ordinary hours of work, prescribed by this clause, worked on any day Monday to Friday, shall be paid at the classification rate prescribed in Clause 8 - Wage Rates and in addition the following premium:

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- (i) Payment of a premium of 15 per cent shall be made for a shift that commences before 6.30 am.
 - (ii) Payment of a premium of 15 per cent shall be made for a shift that commences or finishes after 6.00 pm.
 - (iii) Payment of a premium of 20 per cent shall be made for a shift that commences or finishes after 10.00 pm.
- (g) The premiums prescribed by subclause (f) hereof shall not apply where ordinary hours of work are performed on a Saturday, Sunday or holiday with pay. All ordinary time worked on these days shall be paid as follows:

(i) Saturday Work

For ordinary hours performed between midnight on Friday and midnight on Saturday payment shall be at time and one half rates for such work.

(ii) Sunday and Holidays with Pay

A shift, the greater portion of which is worked on a Sunday or holiday with pay mentioned in subclause (a) hereof, shall be paid double time for work performed on a Sunday and double time and one half for work performed on a holiday with pay.

- (h) In no circumstances shall an employee be required to work a shift in more than 2 periods.

PROVIDED that where in a day, a shift is worked in two periods, a premium of 20 per cent shall be paid, plus an amount for excess fares as prescribed in Clause 9 - Allowances.

PROVIDED FURTHER that the period of a meal break shall be deemed a continuation of the shift.

- (i) If one of those periods prescribed in subclause (h) hereof extends beyond 4 hours, a paid crib break of 20 minutes shall be given in lieu of the meal interval entitlement of subclause (k) of this clause.
- (j) It shall be prohibited for a shift worked in two periods to exceed a spread of 14 hours, or to commence before 6.00 am, or finish after 10.00 pm.

PROVIDED that the employer may, with the agreement of the union, vary this subclause.

- (k) Employees shall be allowed a meal period of not less than 30 minutes or more than one hour after completion of each 4 hours worked.

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(l) The employer and the majority of employees in the plant, business, section or sections concerned, may agree that the ordinary working hours are to exceed 8 hours on any day within the spread of ordinary hours as prescribed by this clause, thus enabling a week day off to be taken more frequently than would otherwise apply.

(m) Substitute Days

(i) An employer, with agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with paragraphs (b)(iii) and (iv) of this clause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of an emergency situation.

(ii) Any individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.

(n) 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 working hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

(ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.

(iii) An employee or the employees may choose to request a union party to this award, to represent their interests in 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 clause, its terms must be set out in the time and wages record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(v) An employer shall record these make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

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(o) 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 provided that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in 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 clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these RDO arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

20. MIXED FUNCTIONS

An employee engaged for more than 3 hours in any one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for the whole of such day.

PROVIDED that where 3 hours or less are worked in the higher classification the employee shall be paid at the higher rate for the time so worked.

21. OVERTIME

- (a) For all time worked outside of ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter. For the purpose of computation of overtime each day's work shall stand alone.

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- (b) In the case of employees other than resident caretakers or janitors, if the hours worked in any day exceed eight, overtime at the appropriate rate shall be paid for all time worked in excess of 7 1/2 hours.
- (c) All overtime on a Saturday shall be paid at the rate of double time.
- (d) An employee required to work overtime for more than two hours after the usual time of ceasing work shall be paid a meal allowance for each such meal.
- (e) For the purpose of computing overtime, the ordinary rate of pay shall be determined by dividing the weekly rate by 38.
- (f)
 - (i) Subject to agreement being reached between the employer and the employee, time off may be allowed in lieu of payment for overtime worked. The amount of time off shall be calculated on the basis of the appropriate overtime rate and to be taken at such time as is agreed.
 - (ii) 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.
- (g) Requirement to Work Reasonable Overtime
 - (i) Subject to paragraph (ii) of this subclause and subclause (f) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;
 - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (5) any other relevant matter.

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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
- (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.

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

(d) Certificate

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

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

(e) Notice Requirements

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

(f) Transfer to a Safe Job

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

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.

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(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.

(i) Special Maternity Leave and Sick Leave

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

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

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

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- (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.
- (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.

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(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;
- (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:

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- (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.
- (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.

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- (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.
- (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.

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- (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:

'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.

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

'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.

(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

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- (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.
 - (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.

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- (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.
- (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.

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- (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.
- (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.

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- (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:

- (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.

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- (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.

(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.

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.

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- (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 for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

23. PAYMENT OF WAGES

The employer shall specify a time and place at which wages and other moneys are to be paid to the employees other than employees engaged for less than one week. The time so specified shall not be more than 48 hours from the time when such wages become due and shall not be later than Thursday in the week. Any employee who is not paid at the time so specified shall be deemed to be working during the time he is kept waiting. Casual employees (as defined) shall be paid within one hour of the termination of employment.

Payment may be made weekly or fortnightly as agreed between the employer and the employee.

Such payment shall be in cash, or by cheque or by direct bank deposit into an account nominated by the employee. The employer may determine the method of payment.

Where payment is to be made by cheque or direct bank deposit and such cheque is not met on presentation or such bank deposit is not made at the time specified, otherwise than in circumstances beyond the control of the employer waiting time shall be paid.

24. PREFERENCE OF EMPLOYMENT

- (a) Preference of employment shall be given to members of the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch provided that such preference shall be extended to persons who undertake to become, and in fact within 14 days of so undertaking do become and subsequently remain, members of the said union.

PROVIDED that such employees are competent and suitable to carry out the work required to be done.

- (b) Where more than one person is applying for employment and all things are considered equal, the employer shall have the freedom to select any one or more of such persons in his discretion.

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25. PROTECTIVE CLOTHING

- (a) Clean overalls, or coveralls shall be supplied where required within the normal course of duty to full time and part-time employees on the completion of one month's service. The initial issue shall be two pairs of overalls, or coveralls to be replaced when necessary.

PROVIDED that this subclause shall not apply to employees engaged as Library Attendants or Domestics.

- (b) Where employees are required to clean toilets, use detergents or injurious substances they shall be supplied with suitable protective gloves and suitable protective footwear.
- (c) Where an employer requires an employee to wear a uniform the employer shall initially provide the employee with two sets of uniforms at the employer's expense. The employee shall maintain and launder these uniforms at the employee's expense.

26. REFERENCE OF DISPUTES

Any dispute concerning this award shall be settled in the following manner:

- (a) negotiation between the employer and the union Shop Steward;
- (b) where there is no Shop Steward available or where the dispute is not settled within the provisions of subclause (a) above, by negotiation between the union and the employer representative;
- (c) failing agreement being reached with the provisions of subclause (b) above, the union or the employer may refer the matter to the Tasmanian Industrial Commission for decision;
- (d) while this disputes procedure is being followed the status quo prevailing before the dispute arose shall be maintained.

27. RELATIONSHIP TO THE NATIONAL TRAINING WAGE (TASMANIAN PRIVATE SECTOR) AWARD

A party to this award shall comply with the terms of the National Training Wage (Tasmanian Private Sector) Award, as varied, as though bound by Clause 6 of that award.

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28. RIGHT OF ENTRY

- (a) For the purposes of interviewing employees on legitimate union business or on matters arising out of this award a duly accredited representative shall have the right to enter the employer's premises on the following conditions:
 - (i) That the accredited representative produce an authority to such person as may be appointed by the employer.
 - (ii) That the accredited representative interviews employees only at such times and places as will not interfere with their work.
- (b) An officer shall be a duly accredited representative of an organisation if he/she be the holder for the time being of a certificate which has not been cancelled or revoked, signed by the secretary and bearing the seal of the organisation and bearing the signature of the holder. The certificate shall be in the following form or in a form not materially different therefrom:

(Name of Organisation)

This is to certify that whose signature appears hereunder, is a duly accredited representative of the abovementioned organisation for the purpose of this award.

.....
Secretary
(Seal)
.....
Signature of Holder of Certificate

(This Certificate is strictly not transferable)

29. SATURDAY, SUNDAY AND HOLIDAY WORK

- (a) Payment shall be at the rate of time and one half for all ordinary hours worked on a Saturday.
- (b) Payment shall be at the rate of double time for all work performed on a Sunday.
- (c) Payment shall be at the rate of double time and one half for work performed on a holiday as prescribed in Clause 18 - Holidays With Pay of this award.
- (d) Employees required to work on a Saturday, Sunday or a holiday with pay as prescribed in Clause 18 - Holidays with Pay of this award shall receive a minimum of 3 hours pay at the appropriate rate.

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PROVIDED that in exceptional circumstances the employer, with the agreement in writing from the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch may engage employees for a lesser number of hours than three hours as prescribed.

- (e) Subject to agreement being reached between the employee and the employer, 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 taken at such time as is agreed.

30. SAVINGS

- (a) Any employee in receipt of a rate of wage in excess of that herein prescribed shall not have his or her wages reduced as a result of this award.
- (b) An employer who at 12 April 1986 was not a member of a registered organisation bound by this award shall be exempt from the payment of overtime or other extraneous payments that might otherwise be payable as a consequence of the introduction of a 38-hour week from 12 April. This exemption shall have effect from the date that this award is gazetted.

31. SHOP STEWARDS

An employee appointed steward or delegate in the shop, office or department in which the employee is employed shall, upon notification thereof to the employer, be recognised as the accredited representative of the union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees whom he/she represents.

PROVIDED that if the steward requests it, he/she may be accompanied at such interview by a union official.

32. SICK LEAVE

- (a) An employee, other than one engaged as a casual employee (as defined), 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, after one month's employment, subject to the following conditions:
 - (i) the employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation;

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- (ii) the employee shall, prior to 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. Where such notification is not given, the employer shall be entitled to require as proof, in accordance with paragraph (iii) of this subclause, a certificate of a medical practitioner;

PROVIDED that where the employee is genuinely unable to give notification prior to the commencement of the shift the requirements of paragraph (iii) of this subclause shall apply.

- (iii) the employee shall provide proof that the employee was unable, on account of such illness or injury, to attend work on the day for which sick leave is claimed in the form of a sworn statutory declaration or a medical certificate provided by a qualified medical practitioner. In the case of absences of more than a single day an employer may request, prior to the employees return to work, as proof a medical certificate.
 - (iv) the employee shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of 2 weeks of ordinary working time;
 - (v) For the purposes of administering paragraph (iv) above an employer may within one month of this award coming into operation or within 2 weeks of the employee entering the employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence the employee has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in paragraph (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
 - (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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33. SUPERANNUATION

(a) Definitions

'Approved Fund' means a superannuation fund which is established in accordance with the Operational Standards for Occupational Superannuation Schemes and has received preliminary listing from the office of the Occupational Superannuation Commissioner - Interim Group.

'Eligible Employee' means a full-time, part-time or casual employee who is employed under a classification of the Miscellaneous Workers Award and who has completed one calendar months service with the employer.

'Employer' means an employer bound by the terms of the Miscellaneous Workers Award.

'Ordinary Time Earnings' means the award classification rate, overaward payments and shift loadings (where relevant).

'Tasplan' means the Tasplan Fund established by Trust Deed and Articles on 24 March 1987.

'Union' means the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch.

(b) Fund

(i) For the purpose of this award contributions made by employers in accordance with the provisions of subclause (d) - Employer Contributions of this clause shall be paid to the Treasurer of TASPLAN.

(ii) All employers upon being bound by this award shall apply to and become party to TASPLAN and upon the acceptance of the Trustees of that scheme of an application to become a participating employer to TASPLAN, duly signed and executed by that employer, become a participating employer of TASPLAN.

(c) Eligibility for Membership

(i) An employee having completed one calendar months continuous service with the employer shall be eligible from the first entry date which next occurs to have contributions paid to the Fund subject subclause (d) - Employer Contributions of this clause.

(ii) An employee shall be enrolled in the approved Superannuation Fund upon the acceptance of the Administrator of the Fund of a membership application form and shall be deemed to be a member of the scheme from his or her entry date as prescribed in paragraph (i) herein.

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- (iii) Notwithstanding the provisions contained in subclauses (i) and (ii) herein, an employee who is a member of an Approved Fund and was having contributions paid in accordance with this clause at his or her previous place of employment shall continue to have contributions paid on his or her behalf from the date of commencing employment with the current employer.

(d) Employer Contributions

- (i) Subject to the rules of the Fund and the conditions identified elsewhere in this clause, contributions shall be paid by employers in respect of each eligible employee at the rate of nine per cent of ordinary time earnings for each complete week employed. This calculation shall be based on the ordinary time worked by an employee in any week and shall exclude work performed and paid as overtime.
- (ii) Subject to subclause (i) herein an eligible employee shall have a minimum contribution per week paid into the Fund of \$1.40.
- (iii) Contributions shall be made for each calendar month an employee is a member of the scheme.
- (iv) An employer shall not be required to contribute during any periods of unpaid leave. Furthermore, an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.
- (v) Pro rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.
- (vi) 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.

(e) Employee Contributions

Subject to the rules of the Fund, employees who may wish to make contributions to the Fund additional to those being paid pursuant to subclause (d) - Employer contributions - herein, shall be so entitled. Such employees may either forward their own contribution directly to the Fund Administrators or, where it is practicable to do so, authorise the employer to pay into the Fund from the employees' wages, amounts specified by the employee subject to the amount of contribution being expressed in whole dollars and any adjustment to the level of contribution being subject to 3 months notice in writing from the employee to the employer or such lesser period as they may both otherwise agree.

(f) Cessation of Contributions

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

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(g) Exemptions

For the purpose of this award the following companies and organisations have been determined to be exempted from the use of TASPLAN and shall contribute to an "Approved Fund" as specified in this clause:

- (i) Northern Television (TNT9) Pty Ltd - Australian Retirement Fund (ARF).
- (ii) Dominic College - Archdiocese of Hobart Superannuation Fund.
- (iii) Webster Limited - Webster Superannuation Fund.
- (iv) Tasmanian Teachers Federation - Tasmanian Teachers Federation Staff Superannuation Fund.
- (v) Liquor, Hospitality and Miscellaneous Union of Australia - Tasmanian Branch - Federated Miscellaneous Workers Union Staff Superannuation Plan.
- (vi) Salamanca Arts Centre Inc. - The Eagle Retirement Fund.
- (vii) Centacare Tasmania - Catholic Superannuation Fund.
- (viii) Cosy Cabins - Commonwealth Life Superannuation Mastertrust.

34. TECHNOLOGICAL CHANGE

Notwithstanding the provisions of Clause 16 - Contract of Employment hereof where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes, the employer terminates the employment of an employee who has been employed by him for the preceding 12 months, he shall give the employee 3 months' notice of the termination of his employment.

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**CONDITIONS OF EMPLOYMENT - DIVISION B - EMPLOYEES ENGAGED IN
ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATION OF
LIBRARY ATTENDANT**

35. GENERAL CONDITIONS

The provisions of:

Clauses	10 - Annual Leave
	13 - Casual and Part-time Employees
	14 - Compassionate Leave
	15 - Consultative Procedures
	16 - Contract of Employment
	17 - Enterprise Flexibility
	18 - Holidays With Pay
	20 - Mixed Functions
	22 - Parental Leave
	23 - Payment of Wages
	24 - Preference of Employment
	25 - Protective Clothing
	26 - Reference of Disputes
	27 - Relationship to the National Training Wage (Tasmanian Private Sector) Award
	28 - Right of Entry
	30 - Savings
	31 - Shop Stewards
	32 - Sick Leave
	33 - Superannuation
	34 - Technological Change

of Division A shall also apply to employees in this division.

36. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 32 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement.

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Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
 - (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

The term '**immediate family**' includes:

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
 - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

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(c) Grievance Process

Clause 26 - Reference of Disputes also applies to a dispute about the operation or effect of this clause.

37. HOURS OF WORK

(a) The ordinary hours of work shall be an average of 38 per week to be worked in not more than 8 hours on any day, but may be worked in one or two periods, on one of the following bases:

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

(b) The method of implementation of the 38 hour week may be agreed to be any of the following:

- (i) by employees working less than 8 ordinary hours each day; or
- (ii) by employees working less than 8 ordinary hours on one or more days each week; or
- (iii) by fixing one week day on which all employees will be off during a particular cycle; or
- (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

At each site an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

PROVIDED that circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.

(c) Agreements reached on the method of implementation of the 38 hour working week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and be available for inspection in accordance with the provisions of the *Industrial Relations Act 1984*.

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PROVIDED that in the absence of agreement on the implementation of the 38 hour week the procedure in Clause 25 - Reference of Disputes in Division A shall apply.

(d) Subject to subclauses (a), (b), (c), (d) and (e) hereof, work may be performed at such hours as may be agreed upon by the employer and employees concerned and be worked on any day of the week including Saturdays and Sundays, in such a manner that ensures the employee shall have at least two consecutive days off duty in each week subject to Clause 38 - Overtime. These days off shall be in addition to any time off arising out of the method of working the 38 hour week.

(e) Establishments Closing Before 9.00 pm

Where an establishment closes before 9.00pm on any day Monday to Friday inclusive all ordinary hours prescribed by this clause, worked between 6.30am and 6.00pm inclusive shall be paid at the ordinary time rate.

PROVIDED that all work performed outside of the ordinary hours prescribed by this clause between 6.30am and 6.00pm inclusive shall be paid at the rates prescribed by Clause 38 - Overtime.

All work performed outside the hours of 6.30am and 6.00pm inclusive shall be paid at the rate of double time.

(f) Establishments Closing at or after 9.00pm

Where an establishment closes at or after 9.00pm Monday to Friday inclusive, all ordinary hours prescribed by this clause, worked between 8.30am and 8.30pm inclusive shall be paid at the ordinary time rate.

PROVIDED that all work performed outside of the ordinary hours prescribed by this clause between 8.30am and 8.30pm inclusive, shall be paid at the overtime rates prescribed by Clause 38 - Overtime.

All work performed outside the hours of 8.30am and 8.30pm inclusive shall be paid at the rate of double time.

(g) Saturday, Sunday and Holidays with Pay

(i) Saturday

For all ordinary hours worked between midnight on Friday and midnight on Saturday payment shall be made at time and one half for such work.

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(ii) Sundays and Holidays with Pay

For a shift, the greater portion of which is worked on a Sunday or a Holiday with Pay as prescribed in Clause 17 - Holidays with Pay, payment shall be made at the rate of double time for work performed on a Sunday and double time and one half for work performed on a holiday with pay.

PROVIDED that for overtime worked on a Sunday or holiday with pay as prescribed in Clause 17 - Holidays with Pay and subject to agreement being reached between the employee and employer, time off may be allowed in lieu of payment. The amount of time off shall be calculated on the basis of the appropriate penalty rate and taken at such time as is agreed.

(h) In no circumstances shall an employee be required to work a shift in more than two periods.

PROVIDED that where in a day a shift is worked in two periods a premium of 20% shall be paid, plus an amount for excess fares as prescribed in Clause 9 - Allowances.

PROVIDED FURTHER that the period of a meal break shall be deemed a continuation of the shift.

The premium prescribed by this subclause shall not be cumulative and shall be substituted by other penalties otherwise prescribed elsewhere in this clause.

(i) If one of those periods prescribed in subclause (h) hereof extends beyond 4 hours, a paid crib break of 20 minutes shall be given in lieu of the meal interval entitlement of subclause (k) of this clause.

(j) It shall be prohibited for a shift worked in two periods to exceed a spread of 14 hours, or to commence before 6.00 am, or finish after 10.00 pm.

PROVIDED that the employer may, with the agreement of the union (as defined), vary this subclause.

(k) Employees shall be allowed a meal period of not less than 30 minutes or more than one hour after completion of each 4 hours worked.

(l) The employer and the majority of employees concerned in the plant, business, section or sections concerned, may agree that the ordinary working hours are to exceed 8 hours on any day, thus enabling a work day off to be taken more frequently than would otherwise apply.

(m) (i) An employer, with agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with paragraphs (b)(iii) and (iv) of this clause, for another day in the case of a break down in machinery or a failure or shortage of electric power or to meet the requirements of the business in an emergency.

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- (ii) Any individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.

(n) 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 working hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in 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 clause, its terms must be set out in the time and wages record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record these make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(o) 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 provided that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.

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- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these RDO arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

38. MINIMUM ENGAGEMENT

Employees required to work on a Saturday, Sunday or a holiday with pay as prescribed in Clause 18 - Holidays with Pay shall receive a minimum of 3 hours pay at the appropriate rate.

PROVIDED that in exceptional circumstances the employer, with agreement in writing from the union may engage employees for a lesser number of hours than three hours as prescribed.

39. OVERTIME

- (a) Subject to subclauses (b) and (c) hereof for all time of duty outside of ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter.
- (b) For establishments closing before 9.00pm, all time of duty outside of 6.30am to 6.00pm Monday to Friday inclusive shall be paid at double time.
- (c) For establishments closing at or after 9.00 pm, all time of duty outside of 8.30am to 8.30pm Monday to Friday inclusive shall be paid at double time.
- (d) If the time of duty outside of ordinary hours exceeds eight, overtime at the appropriate rate shall be paid for all time worked in excess of 7 1/2 hours.
- (e) All overtime on a Saturday shall be paid at the rate of double time.
- (f) An employee required to work overtime for more than two hours after the usual time of ceasing work shall be paid a meal allowance for such meal.
- (g) For the purpose of computing overtime, the ordinary rate of pay shall be determined by dividing the weekly rate by 38.

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- (h) (i) Subject to agreement being reached between the employee and employer, time off may be allowed in lieu of payment for overtime worked. The amount of time off shall be calculated on the basis of the appropriate rate and taken at such time as is agreed.
- (ii) 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.

Tim Abey
COMMISSIONER

1 September 2004