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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

TOTALIZATOR AGENCY AWARD

ORDER BY CONSENT -

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

CLAUSES 5, 8, 17 AND 38 ARE VARIED AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Totalizator Agency Award".

2. SCOPE

This award shall apply to the industry of the Totalizator Agency Board and its agents in respect of all employees for whom classifications appear in this award.

3. ARRANGEMENT

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4. DATE OF EFFECT

This award shall have effect from the first full pay period to commence on or after 1 August 2004.

5. SUPERSESSION AND SAVINGS

This award supersedes the Totalizator Agency Award No. 1 of 2003 (Consolidated).

PROVIDED that no entitlement accrued or obligation incurred shall be affected by the supersession.

6. AWARD INTEREST AND PARTIES BOUND

(a) The following employee Organisation has an interest in this award under Section 63(10) of the Act:

The Australian Municipal, Administrative, Clerical and Services Union.

(b) (i) the Tasmanian Chamber of Commerce and Industry Limited is deemed pursuant to Section 62(2) of the Act to be an employer organisation having an interest in this award;

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- (ii) the Tasmanian Trades and Labor Council is deemed pursuant to Section 62(3) of the Act to be an employee organisation having an interest in this award.
- (c) This award is binding upon:
 - (i) the Totalizator Agency Board and all employers in the industry in respect of employees for whom classifications are contained in this award;
 - (ii) all employees for whom classifications are contained in this award.

7. DEFINITIONS

DIVISION A - CASUAL STAFF

'Full-time employee' means any employee who is paid a weekly wage as for 40 hours.

DIVISION B - ADMINISTRATIVE AND OTHER STAFF

'Agency supervisor' means a Casual Clerk who, in addition to carrying out the duties in 'Operational staff' below also acts as a Supervisor from time to time of an Agency during periods of absence of the Agency Manager, or Agent.

'Board' means the Tasmanian Totalizator Agency Board.

'Employed casually' means employment on a contract of hiring of less than by the week.

'Operational staff' means Casual Clerks employed by the Board or by an Agent (excluding Sub-Agent) of the Board in any agency or section in all or any of the following duties, namely sellers, payers, sorters, collators, checkers, recorders, telephonists, ledger clerks and like operational and clerical categories.

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8. WAGE RATES

DIVISION A - CASUAL STAFF

ADULTS

Adult employees classified hereunder shall be paid the rates of wage assigned to that classification.

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Hobart Control Centre			
When in Sole Charge	434.20	144.00	578.20
All other times	387.30	142.00	529.30
Agency Supervisors			
(i) When in Sole Charge			
(1) District Centres & Grade I Agencies (including Hobart Telephone Betting)	417.90	144.00	561.90
(2) All Other Agencies	387.30	142.00	529.30
(ii) At Other Times			
(1) District Centres & Grade I Agencies	387.30	142.00	529.30
(2) All Other Agencies	375.60	142.00	517.60
(iii) Agency Supervisors who are appointed in sole charge of a branch or agency for a period in excess of two consecutive weeks whilst the manager or agent is absent, will be paid the minimum salary appropriate to such grade of agency for all time worked.			
All Other Operational Staff			
	363.20	142.00	505.20

Notwithstanding the above, all new staff undergoing training shall be paid at 70 percent of the normal rate for the first 20 hours of employment.

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DIVISION B - ADMINISTRATIVE AND OTHER STAFF

1. ADULTS

Adult employees classified hereunder shall be paid within the minimum and maximum salaries per annum as set out hereunder:

		MINIMUM			MAXIMUM		
		Base	Safety	Salary	Base	Safety	Salary
		Rate	Net	per	Rate	Net	per
		\$	Adjust-	Annun	\$	Adjust-	Annun
			ment	\$		ment	\$
			\$			\$	
A 1	Administrative Officer	24740	7384	32124	26907	7280	34187
A 2	Accounts Supervisor	22665	7488	30153	24639	7384	32023
A 3	Accounts Clerk	19011	7384	26395	20901	7384	28285
A 4	Receptionist	19011	7384	26395	20901	7384	28285
A 5	Printing Clerk	19011	7384	26395	20901	7384	28285
A 6	Typist	19011	7384	26395	20901	7384	28285
O 7	Senior Programmer	33718	7280	40998	38545	7176	45721
O 8	Programmer	27757	7384	35141	31699	7384	39083
O 9	Graduate Programmer	24615	7384	31999	25782	7384	33166
O 10	Raceday Manager	28169	6384	34553	32185	7384	39569
O 11	Raceday Supervisor	25938	7384	33322	29464	7384	36848
O 12	Control Centre Supervisor	22468	7488	29956	24408	7384	31792
O 13	Marketing Manager	25717	7384	33101	29169	7384	36553
O 14	Senior Technician	27637	7384	35021	31537	7384	38921
O 15	Technician	25572	7384	32956	29018	7384	36402
O 16	Development Manager- Operations	25938	7384	33322	29464	7384	36848
O 17	Branch Manager (1)	22665	7488	30153	24639	7384	32023
O 18	Branch Manager (2)	22468	7488	29956	24408	7384	31792
O 19	Telephone Betting Manager	23647	7488	31135	25708	7384	33092
O 20	On-Course Manager/South	23647	7488	31135	25708	7384	33092

KEY A = Administrative Employees

O = Other Staff

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2. JUNIOR CLERKS

The minimum salary per annum that shall be paid to junior clerks shall be the undermentioned percentage of the appropriate salary per annum for classification 6 hereof:

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

Review

The position of all officers in relation to the salary range shall be reviewed annually by the employer.

Should the review not be to the satisfaction of an employee, such employee shall have the right in the first instance to raise the matter with management and if not satisfied shall have the right to have the matter referred by the union for determination by the Tasmanian Industrial Commission.

DIVISION C - SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

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

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

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

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(b) For the purposes of this subclause:

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

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

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

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

(c) Supported Wage Rates

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

Assessed capacity (paragraph (d))	Percentage 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;

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(ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

(i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.

(ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other Terms and Conditions of Employment

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

(h) Workplace Adjustment

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

(i) Trial Period

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

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

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

DIVISION D – MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

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

(c) How the Minimum Wage Applies to Juniors

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

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(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

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

CONDITIONS FOR EMPLOYEES IN DIVISION A - CASUAL STAFF

9. CASUAL EMPLOYEES

A casual employee for working ordinary time shall be paid per hour one fortieth of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20 percent of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave, and public holidays.

10. CONDITIONS AGREED TO UPON ENGAGEMENT

The conditions of contract are:

CONDITIONS I AGREE to accept employment within the personnel policies of the Board and subject also to the following conditions;

1. I will accept responsibility for all cash handled by me and the making good of any cash shortages that may occur while I have sole access to the cash.
2. Any cash surplus that I may incur shall be controlled through an 'unders and overs' account at each location from which money may be drawn to compensate for cash shortages.

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- 3. I will not, during my employment with the Board or any agent of the Board or at any time thereafter, divulge or communicate any confidential information acquired by me in the course of my duties.
- 4. I understand that the compulsory retirement age is 65 years for males and 60 years for females.
- 5. I will not transfer to other Branches or Agencies or on-course Totalizators of T.A.B. without prior advice to the Branch or Agency or on-course Totalizator where employed, or to the Board.

AND I DO FURTHERMORE AGREE and acknowledge that if I commit any breach of the foregoing provisions I may be liable to immediate dismissal without notice.

Signature of Applicant
Date

PROVIDED HOWEVER:

- 1. The Board at its own discretion elect not to recoup any cash shortages or error loss from a member.
- 2. Shortages which are the result of the faulty operation of equipment or electrical or mechanical systems shall not be classified as shortages for the purpose of this clause.
- 3. In the event of any member becoming liable to make repayment pursuant to this clause, the amounts of instalments shall not exceed the rate of 25 percent of the weekly wages of such member except in exceptional circumstances.

11. HOURS

- (a) The hours of work shall be an average of 38 hours per week to be worked in not more than five starts, between the hours of 8.30 am and 8.30 pm, Monday to Saturday inclusive.

PROVIDED that an employee shall not work more than 152 hours in a 28 day cycle of no more than 20 starts, without the payment of overtime.

- (b) All time of work between the hours of 8.30 pm and 8.30 am Monday to Saturday inclusive, shall be paid for at the rate of time and one half of the ordinary rate.
- (c) All work in excess of 10 hours on any one day, Monday to Saturday inclusive, shall be paid at double the ordinary rate.
- (d) All work on Sundays and public holidays shall be paid for at double the ordinary rate.

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- (e) Time worked shall be calculated and paid for to the nearest five minutes. Time worked at more than one agency on any one day will be cumulative except where the second and subsequent periods of work are voluntary.

12. LATE FINISH

Employees terminating an engagement after 9.30 pm and beyond the time when access to reasonable public transport is available, will be provided with special transport arrangements to their homes if needed.

13. PAYMENT OF WAGES

Wages due will be calculated as at Wednesday and will be available for collection from Thursdays in agencies and Fridays in Hobart Control Centre and Hobart Telephone Betting. If requested, each employee shall receive a detailed pay advice, listing gross pay, tax, other deductions and net pay.

Wages may also be paid fortnightly, on the day/s specified above, by electronic funds transfer to an account nominated by the employee. However before the introduction of Electronic Funds Transfer the Union will be consulted on the use of this method. The Union will not unreasonably withhold its agreement.

14. PERIOD OF ENGAGEMENT

Employees will be rostered as required by the Board and where possible at least seven days notice of an engagement will be given.

Each engagement will be for a minimum period of two hours, except that on Saturdays and Public Holidays the minimum period will be three hours.

15. POSTPONED AND ABANDONED MEETINGS

Employees who, after carrying out the Board's prescribed check procedure when it appears that a meeting may be postponed or abandoned, are requested to report for duty and upon attending are then advised that their services are not required because of a meeting being postponed or abandoned shall be paid a minimum of two hours at the appropriate rate.

16. PUBLIC HOLIDAYS

New Year's Day, Australia Day, Hobart Regatta Day (South), Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Show Day, Recreation Day (where Hobart Regatta Day is not observed), Christmas Day, Boxing Day, will constitute public holidays for the purpose of payment of penalty rates.

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'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 12 paid public holidays per year.

17. REST PAUSES AND MEAL BREAKS

Where a period of engagement is four hours or more, a rest period of 10 minutes shall be allowed at a time to be mutually arranged during such period of engagement.

Where it is intended to work employees longer than five hours, they will be given a meal break of half an hour after working for five hours which will not be counted as time worked, unless in special circumstances there is mutual agreement that the employee work through and be paid for all time worked.

Employees required for duty on any day for more than 10 hours will be allowed a meal break of not less than 30 minutes, which will not be counted as time worked, and will be supplied with a meal or paid the sum of \$12.70 in lieu thereof.

Discretion is allowed the parties to mutually agree on Rest Pauses and Meal Breaks to cover the particular circumstances.

18. UNIFORMS

Where staff are required to wear a distinctive dress or uniform, it will be supplied, and laundered if requested, free of charge by the Board.

CONDITIONS FOR EMPLOYEES IN DIVISION B ADMINISTRATIVE AND OTHER STAFF

19. ANNUAL LEAVE

(a) Period of Leave

(i) Administration

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service on fortnightly hiring.

(ii) Other Staff

A period of 35 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service on fortnightly hiring.

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(b) Broken Leave

Leave allowed under the provisions of this subclause shall be given and taken in one consecutive period.

PROVIDED that where there is agreement between the employer and employee, annual leave may be taken in two or more periods. No entitlement shall be permitted to accrue beyond 12 months after the date of accrual.

(c) Leave to be Exclusive of Public Holidays

If any of the holidays prescribed by Clause 25 - Holidays with Pay fall within an employee's period of annual leave, and is observed on a day which, in the case of that employee would have been an ordinary working day, there shall be added to that leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

Except as provided in subclause (h) payment shall not be made or accepted in lieu of annual leave.

(e) Time of Taking Leave

Annual Leave shall be given at a time mutually agreed upon or fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued, and after not less than two weeks' notice to the employee.

(f) Payment for Period of Leave

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

(ii) In addition thereto all employees shall receive a loading of 17½ percent on payment made for annual leave as prescribed in paragraph (i) hereof. Such loading shall not apply to proportionate leave on termination of service.

PROVIDED that the maximum holiday leave loading payable under this subclause shall be \$465.00 in the case of an employee entitled to four weeks annual leave and \$581.25 for an employee entitled to five weeks annual leave, such amounts to be increased as at June 1st each year in accordance with wage increases in the award.

(g) Leave Allowed before Due Date

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

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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 complete month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable to the employee upon the termination of the employment, one-twelfth of the amount of wages paid on account of annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 25 - Holidays with Pay.

(h) Proportionate Leave on Termination of Service

If after one completed month of service in any 12 monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid as follows:

(i) Administration

13 1/3 hours for each completed month of continuous service.

(ii) Other Staff

16 2/3 hours for each completed month of continuous service.

This service is in respect of which leave has not been granted.

20. 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 34 - 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.

For the purposes of this clause part-time employees, who are not in receipt of a loading in lieu of entitlements as specified in Clause 29 - Part-Time Employees, shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlements per annum.

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.

Leave may be taken for part of a single day.

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- (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

- (i) 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.
- (ii) A part-time employee in receipt of a loading in lieu of entitlements to paid leave as specified in Clause 29 - Part-Time Employees shall be entitled to take a maximum of one week's unpaid carer's leave per annum.

Where a part-time employee's hours of work are not constant the employee's entitlement to unpaid 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.

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(c) Grievance Process

Any dispute or claim arising out of Carer's Leave provisions of the award shall be dealt with in the following manner:

- (i) the matter shall first be discussed between the employee and the employee's immediate supervisor;
- (ii) if not settled the matter shall be discussed between the employee's workplace delegate or representative and the immediate supervisor and the relevant manager with the authority to approve leave;
- (iii) if not settled the employee may elect to refer the matter to the relevant union official to enable discussions between the appropriate union representatives and management representatives to occur;
- (iv) if not settled the matter may be submitted to the Tasmanian Industrial Commission for determination.

21. CLOTHING

Where an employer requires an employee to wear outer clothing or protective clothing of a distinctive colour or style, such clothing shall be supplied by the employer without cost to the employee. The cost of repair and replacement of such clothing shall likewise be the responsibility of the employer.

22. COMPASSIONATE LEAVE

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

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

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

Special compassionate leave may be granted to an employee.

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23. CONTRACT OF EMPLOYMENT

- (a) With the exception of employees engaged as specified in Clause 10 - Conditions Agreed to Upon Engagement of this award, all employment shall be by the fortnight and the employment of an employee will not be terminated except for misconduct which would justify instant dismissal, without at least a fortnight's notice being given by the employer to the employee, and the employee shall likewise give to the employer a fortnight's notice of his intention to terminate his employment. If a fortnight's notice be not given by the employer or employee, a fortnight's wages shall be paid or forfeited as the case may be, and in the case of misconduct wages shall be paid up to the time of dismissal only.

Any dispute on what constitutes misconduct shall be determined by the Tasmanian Industrial Commission whose decision shall be final.

- (b) An employee shall be entitled to receive on request a Certificate of Service on termination of services. Such Certificate shall contain at least the commencing and finishing dates of service and shall become the absolute property of the employee.
- (c) The employer may, in the event of misconduct, suspend an employee without pay. The maximum period of suspension shall be one week. Prior to the implementation of a suspension, the union shall be advised of the intention to undertake such suspension. In the event that a union official cannot be contacted, the suspension will not be implemented for a period of at least 24 hours.

Should the employee not agree to the suspension, the union shall have the right to refer the matter to the 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 of, or rescind, the suspension. Nothing in this subclause shall affect the right of the employer to dismiss an employee in accordance with the previous subclause.

24. HOLIDAY WORK

- (a) Administration

For all time of duty on any of the holidays mentioned in Clause 25 - Holidays with Pay, payment shall be made at the rate of double time and a half, with a minimum payment as for three hours worked.

- (b) Other Staff

For all time of duty on any of the holidays mentioned in Clause 25 - Holidays with Pay, payment shall be made at the rate of double time with a minimum payment as for three hours worked.

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25. HOLIDAYS WITH PAY

- (a) (i) All employees shall be allowed the following days as paid holidays - New Year's Day, Australia Day, Hobart Regatta Day (South of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (ii) In addition, administration employees shall be allowed Easter Tuesday and all other employees - Easter Saturday.
- (iii) By mutual agreement between the employer and employee an employee may elect to take time off in lieu of a public holiday.
- (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, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) **'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.

26. HOURS

- (a) The hours of work for which the rates of wages are fixed by this award shall be as follows:
- (i) Administration
- Between the hours of 8.45 am to 5.00 pm.
- Monday to Friday inclusive.
- (ii) Other Staff
- Between the hours:
- | | |
|---------------------|-------------------|
| Monday 7.30 am - | Tuesday 2.30 am |
| Tuesday 7.30 am - | Wednesday 2.30 am |
| Wednesday 7.30 am - | Thursday 2.30 am |
| Thursday 7.30 am - | Friday 2.30 am |
| Friday 7.30 am - | Saturday 2.30 am |
| Saturday 7.30 am - | Sunday 2.30 am |

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(b) (i) Administration

The hours of work prescribed by this clause shall excepting for a meal break of not less than 30 minutes nor more than 75 minutes, be continuous on each day. Such meal break shall be taken between the hours of 11.30 am and 2.30 pm.

PROVIDED that in exceptional circumstances, discretion is allowed to the parties to mutually agree to vary the time of the meal break.

(ii) Other Staff

A meal break of 30 minutes shall be allowed so as not to interfere with the responsibility of the job but shall be counted as time worked.

(c) Administration

Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than five hours without a break of not less than 30 minutes for a meal.

(d) Each employee shall be paid the weekly wage prescribed for a week of 38 hours for each week that he/she is ready, willing, and available for work during the hours prescribed herein, and, in addition thereto, such overtime or other penalty rates, if any, that may have occurred during the relevant period.

(e) Other Staff

The working period for other staff shall be governed by the racing calendar in each week and will include Saturdays, some evenings and public holidays on which racing is conducted.

(f) Make up time

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

(i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

(ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off 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.

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- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation 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 records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
 - (v) An employer shall record make up time arrangements in the relevant time and wages book, at each time this provision is used.
- (g) 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 to provide 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 negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off 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 Rostered Days Off arrangements in the relevant time and wages book, at each time this provision is used.

27. OVERTIME

- (a) Other Staff and Administration

Overtime at the rate of time and one half for the first three hours and double time thereafter shall be paid where employees work:

- (i) in excess of 152 hours in a 28 day cycle;

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- (ii) in excess of 10 hours per day;
- (iii) outside the spread of ordinary hours.

PROVIDED that no employee shall be required to commence duties in ordinary hours on more than 20 occasions in any 28 day cycle.

- (b) An employee who is recalled to work overtime after leaving the employer's premises, shall receive a minimum payment as for three hours worked.
- (c) By mutual agreement between the employer and employee, an employee may elect to take time off in lieu of overtime payments. Time off shall be at the same rate as the overtime rate which would have applied.
- (d) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

28. 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;

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- (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.
- (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 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).
- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

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

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

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

(h) Cancellation of Maternity Leave

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

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

(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:

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

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

(j) Maternity Leave and Other Leave Entitlements

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

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

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

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

PART B - PATERNITY LEAVE

- (a) Nature of Leave

Paternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

- (c) Eligibility for Paternity Leave

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

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

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

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

(d) Certification

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

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

(e) Notice Requirements

- (i) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (1) the birth occurring earlier than the expected date; or
 - (2) the death of the mother or the child; or
 - (3) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

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(f) Variation of Period of Paternity Leave

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

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

(k) Return to Work after Paternity Leave

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

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

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

(l) Replacement Employees

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

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

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

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

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

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

(c) Eligibility

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

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

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

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(d) Certification

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

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

(e) Notice Requirements

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

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- (iv) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

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(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

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

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

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

'Female employee' means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

'Spouse' includes a de facto spouse.

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

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

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

(b) Entitlement

With the agreement of the employer:

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

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

(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.
- (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.

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- (iv) Unbroken service as a replacement employee shall be treated as continuous service as provided for in paragraph (a) Definitions, '**Continuous service**' of this part.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

29. PART-TIME EMPLOYEES

Employees engaged to regularly work less than 38 hours per week shall be paid an hourly rate based on 1/38th of the minimum weekly wage rate for the classification in question. Such employees shall be entitled to the benefits of this award including annual leave, sick leave and public holidays on a pro rata basis.

PROVIDED that, by agreement between the employee and the employer, loading of 20 percent may be paid in lieu of annual leave, sick leave and public holidays.

30. PAYMENT OF WAGES

Unless otherwise mutually agreed between the employer and employee, payment of wages shall be made in cash not later than Thursday in each week and not later than eight hours after the commencement of work on that day, in the employer's time, and shall be made at the place of employment.

31. REDUNDANCY

Where the employer intends to act on any feasibility study which could result in a change to staffing levels and/or the possibility of redundancy exists, the employer shall, if possible, at least three calendar months before taking any action, advise the union of the situation, providing all relevant details and arrange discussions with officers of the union.

32. RELIEVING AND HIGHER DUTIES

- (a) An employee directed to perform the duties of a higher classified position for a continuous period of not less than five working days shall be paid the minimum salary for the higher classified position.
- (b) Where an employee is required to perform some but not all the duties of the higher classified position, a salary representing the same proportion of the higher duties performed shall be paid.

PROVIDED that no higher salary shall be payable where less than 25 percent of the duties of the higher position are performed.

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33. REST PERIODS

Employees who work for four hours or more on any day shall be granted one 10 minute rest period.

If the work period includes a meal break, the rest period is to be granted in that portion of that work period which is the greater or where such work periods are of equal duration, the rest period of 10 minutes shall be given at a time to be mutually agreed upon.

PROVIDED that employees who work for seven and one-half hours or more on any day shall be granted two 10 minute rest periods, one during the period of work before, and one during the period of work after the meal break. All rest periods shall be counted as time worked.

PROVIDED FURTHER that in exceptional circumstances, discretion is allowed to the parties to mutually agree to vary the time of the rest period.

34. SICK LEAVE

(a) An employee who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:

- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
- (ii) he shall, where possible, at 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 absences;
- (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed, provided that this shall not be a requirement for absences totalling four days in any one year;
- (iv) the employee shall not be entitled in any year to sick leave credit in excess of two weeks of ordinary working time.

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

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

35. STEWARD

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

PROVIDED that if the steward so request it, he may be accompanied at such interview by another employee and/or by his union official.

36. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to cooperating positively to increase the efficiency and productivity of enterprises and to enhance the career opportunities and job security of employees subject to the award.
- (b) Consistent with the objectives of subclause (a) herein, employers, employees and the union shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.
- (c) An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training consistent with the classification structure of the award.

This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

37. SUNDAY WORK

For all time of duty on a Sunday, outside of ordinary hours, payment shall be made at the rate of double time with a minimum payment as for three hours worked.

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38. TEA MONEY

- (a) An employee required to work for more than 10 hours shall either be supplied with an adequate meal by the employer or be paid \$12.70 meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Secretary for Labour.

39. TRAVELLING TIME AND ALLOWANCES

- (a) Staff terminating an engagement after 9.30 pm or beyond the time when access to reasonable public transport is available, will be provided with special transport arrangements to their homes.
- (b) Employees travelling on duty who are required to remain away from their normal place of residence overnight shall be paid an allowance calculated in accordance with the following components:

COMPONENT	WITHIN TASMANIA \$	OUTSIDE TASMANIA \$	SYDNEY \$
Overnight Absence From Normal Place of Residence	66.45	92.95	108.50
Breakfast (preceding or following an overnight absence) applicable hours			
7.00 am - 8.30 am	10.85	10.85	10.85
Lunch (preceding or following an overnight absence) applicable hours			
12.30 pm - 2.00 pm	9.65	9.65	9.65
Dinner (preceding or following an overnight absence) applicable hours			
6.00 pm - 7.30 pm	20.55	20.55	20.55

PROVIDED that if the employee so wishes, he or she shall be allowed advance payment of the estimated allowance payable for the period of travel in question.

Adjustment: Allowances specified in this clause shall be adjusted in a like manner and from the same operative date as is applicable in the General Conditions of Employment Award as varied from time to time.

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(c) Where an employee is able to satisfy the employer that a reasonable actual expense incurred exceeded the allowances herein specified, the employee shall be entitled to reimbursement of such additional expense.

(d) Kilometrage Allowance

Employees required to use their own vehicle on the employer's business shall be reimbursed at the rate of 40.74 cents per kilometre. Provided that this rate shall be adjusted on 1 June each year in accordance with movement in the "Transportation" component of the Consumer Price Index for the 12 months preceding the March Quarter in the same year.

GENERAL CONDITIONS FOR EMPLOYEES IN DIVISION A - CASUAL STAFF AND DIVISION B - ADMINISTRATIVE AND OTHER STAFF

40. ENTERPRISE FLEXIBILITY

(a) Notwithstanding anything contained in this award but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.

(b) An agreement shall be subject to the following requirements:

(i) The majority of employees affected by the change must genuinely agree to the change.

(ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.

(iii) The relevant union shall be advised by the employer of their intention to commence discussions with employees on an agreement under this clause.

(iv) The relevant union must be a party to the agreement.

(v) The relevant union shall not unreasonably oppose any agreement.

(c) Any 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.

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

41. OCCUPATIONAL SUPERANNUATION

(a) Contributions

(i) Full-time employees

An employer shall make a contribution equivalent to three percent of ordinary time earnings (as defined) into an approved superannuation fund in respect of all eligible employees (as defined) as from 1 January 1991.

(ii) Casual and part-time employees

In the case of eligible casual and part-time employees, contributions shall be made where the employee works 50 hours or more averaged over a four weekly accounting period.

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

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

(b) Definitions

'Eligible employee' shall mean an employee whether weekly, part-time or casual, who has had at least six months continuous service with an employer subject to this award.

PROVIDED that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this award.

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

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

(c) Funds

Contributions determined in accordance with subclause (a) herein shall be made into either of the following nominated approved funds:

- (i) CARE;
- (ii) TASPLAN.

P C Shelley
DEPUTY PRESIDENT

16 August 2004