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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)**

**SHELLFISH INDUSTRY AWARD**

**ORDER BY CONSENT**

**No. 1 of 2004**

**(Consolidated)**

CLAUSES 2, 4 AND 6 OF PART I, 1 AND 6 OF PART III, AND 1 AND 2 OF PART IV ARE VARIED AND THE AWARD IS CONSOLIDATED

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## **PART I - APPLICATION AND OPERATION OF THE AWARD**

### **1. TITLE**

This award shall be known as the Shellfish Industry Award.

### **2. INDEX**

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### **3. SCOPE**

This award is established in respect of the industry of producing live shellfish and includes the marine farming of oysters, mussels, clams, scallops and abalone.

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

This award shall come into operation on and from the first full pay period commencing on or after 1 August 2004.

### **5. AWARD INTEREST**

- (a) The following employee organisation has an interest in this award pursuant to section 63(10) of the *Industrial Relation Act 1984*:

The Australian Workers' Union, Tasmania Branch

- (b) The following employer organisation is deemed to have an interest in this award pursuant to section 62(2) of the *Industrial Relations Act 1984*:

The Tasmanian Chamber of Commerce and Industry Limited

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- (c) The following organisation is deemed to have an interest in this award pursuant to section 62(3) of the *Industrial Relations Act 1984*:

The Tasmanian Trades and Labor Council.

## **6. SUPERSESION**

This award incorporates and supersedes the Shellfish Industry Award No. 1 of 2003 (Consolidated).

## **7. GENERAL DEFINITIONS**

**'Casual Employee'** means any person who is engaged on an irregular basis to perform specific task(s) over a defined time period. At the completion of such period and or task(s) the contract of employment shall be deemed to be terminated.

**'Full-time employee'** means any person who is engaged on an ongoing full time basis on one of the work cycles described in Part V Clause 1 - Hours and Days of Work, subclause (a).

**'Junior employee'** means any person engaged as either a full time employee or a casual employee who has not attained the age of 18 years.

**'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, making a total of up to 11 paid holidays per year.

**'Union'** means a registered organisation of employees listed in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 5 - Award Interest.

## **PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS**

### **1. CONTRACT OF EMPLOYMENT**

- (a) General

(i) Upon commencing work with an employer all employees shall be classified under a level as prescribed in Part III – WAGE RATES AND RELATED MATTERS Clause 2 - Classification Descriptors of this award.

(ii) All employees on engagement shall be provided with:

- (1) Written advice indicating which classification level applies,

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- (2) Written advice as to the work cycle provided by Part V – HOURS OF WORK, PENALTY PAYMENTS & OVERTIME, Clause 1 - Hours and Days of Work,

**PROVIDED** that subclauses (1) and (2) herein shall also apply in respect of an employee who is reclassified after engagement.

- (iii) An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

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

(b) Termination of Employment

- (i) A full-time employee (as defined) may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
- (ii) For the purpose of this subclause, termination of employment shall include termination with or without notice.
- (iii) Nothing in this clause shall affect the right of an employer to dismiss any employee without notice for serious and wilful misconduct or neglect of duty.

**PROVIDED** that any dispute arising out of this subclause shall be dealt with in accordance with Part VII – CONSULTATION AND DISPUTE RESOLUTION, Clause 3-Resolution of Disputes contained in this award.

## **2. EMPLOYMENT CATEGORIES**

(a) Full-Time Employees (as defined)

Full-time employees (as defined) shall be engaged by the week.

(b) Casual Employees (as defined)

- (i) Casual employees (as defined) shall be engaged for minimum period of 3 hours per day.

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- (ii) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty eighth of the weekly rates prescribed for a full-time employee (as defined) engaged at the appropriate classification level prescribed in Part III, Clause 1 - Wage Rates plus 20%; such additional amount to be payable in lieu of annual leave, sick leave and holidays with pay.
- (iii) A casual employee (as defined) required to work on a holiday as prescribed in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 3 - Holiday, Saturday, Sunday and Overtime Payment, and/or Part VI – LEAVE AND HOLIDAYS WITH PAY , Clause 5 - Holidays with Pay, shall be paid at the penalty rate applicable to a full-time employee (as defined) engaged at the appropriate classification level prescribed in Part III – WAGE RATES AND RELATED MATTERS, Clause 1 - Wage Rates (i.e. this calculation shall exclude the 20% loading prescribed in subclause (ii) herein).

**3. NO REDUCTION IN WAGES IN CERTAIN CASES**

Subject to the provisions of Part III - WAGE RATES AND RELATED MATTERS, Clause 1 - Wage Rates subclause (b) of this award, where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee, the wage rates so paid in excess shall not be reduced as a result of this award.

**PART III - WAGE RATES AND RELATED MATTERS**

**1. WAGE RATES**

1. WAGES - ADULTS

- (a) Adult employees in a classification level undermentioned shall be paid the weekly wage rate appearing opposite that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Shellfish Farm Attendant (as defined) Level 1	78	325.40	142.00	467.40
Shellfish Farm Attendant (as defined) Level 2	80	333.80	142.00	475.80
Shellfish Farm Attendant (as defined) Level 3	93	388.00	142.00	530.00
Shellfish Farm Attendant (as defined) Level 4	100	417.20	144.00	561.20

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## 2. JUNIORS

A junior employee (as defined) shall be paid the undermentioned percentage of the weekly wage rate for a Shellfish Farm Attendant Level 1 (as defined).

	%
Under 17 years of age	65
Over 17 years of age but under 18 years of age	75

## **2. CLASSIFICATION DESCRIPTORS**

### **Shellfish Farm Attendant - Level 1**

**(% Wage relativity to Shellfish Farm Attendant Level 4 - 78%)**

A Shellfish Farm Attendant - Level 1 means an employee who has not completed at least four months service in the industry as prescribed in Part I, Clause 3 - Scope and who is engaged on either an inter-tidal, deep water, or land-based shellfish farm or enterprise to operate, with supervision, some or all of the following:

boats or punts; loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking); recording data; mechanical equipment such as grading machines; as well as general maintenance duties.

### **Shellfish Farm Attendant - Level 2**

**(% Wage relativity to Shellfish Farm Attendant Level 4 - 80%)**

A Shellfish Farm Attendant Level 2 means an employee who has completed at least four months service as a Shellfish Farm Attendant - Level 1 (as defined) and in addition is capable of performing, without constant supervision, some or all of the following functions:

operate boats or punts; loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking); recording data, operation of mechanical equipment such as grading machines; as well as general maintenance duties.

### **Shellfish Farm Attendant - Level 3**

**(% Wage relativity to Shellfish Farm Attendant Level 4 -93%)**

A Shellfish Farm Attendant - Level 3 means an employee who, in addition to performing some or all of the functions of Shellfish Farm Attendant - Level 2 (as defined), may be required to accept responsibility for acting in a minor supervisory capacity in directing the work of other employees.

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#### **Shellfish Farm Attendant - Level 4**

#### **(% Wage relativity to Shellfish Farm Attendant Level 4 - 100%)**

A Shellfish Farm Attendant - Level 4 means an employee who, in addition to performing some or all of the functions of Shellfish Farm Attendant - Level 2 (as defined), directs the work of other employees and accepts responsibility for acting in charge.

### **3. MIXED FUNCTIONS**

- (a) An employee engaged for more than 3 hours on any one day on duties classified at a higher level as described in Part III – WAGE RATES AND RELATED MATTERS, Clause 2 - Classification Descriptors shall be paid at the higher rate for the whole day. If for less than 3 hours on any one day he/she shall be paid the higher rate for the time so worked.
- (b) This provision shall not apply in circumstances where an employee is performing higher duties as part of training programme, which is directed to skill enhancement and is recognised by an accredited Industry Training Body and/or Tertiary Institution.

### **4. PAYMENT OF WAGES**

- (a) Wages may be paid weekly, fortnightly or monthly by agreement between the employer and employee, by direct bank deposit, cheque or cash.
- (b) On termination all monies due to the employee shall be paid at the time of termination, or where this is not practicable the next day when banking facilities are available.

### **5. SUPERANNUATION**

- (a) Contributions
  - (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into TASPLAN (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 13 February 1992.
  - (ii) 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.
  - (iii) For new employees contributions shall commence from the date the employee commenced employment.



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(iv) 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 C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Casual Employees

Contributions shall be made in respect to a casual employee (as defined) where that employee works at least 20 hours over a fund billing statement month.

(c) Definitions

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

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'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.

**'TASPLAN'** shall mean the superannuation fund established by Trust Deed made on 2 March 1989 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(d) Exemptions

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

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 1 January 1992 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 1 January 1992 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN.

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(d) Procedure for Seeking Exemption

- (i) An employer seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 July 1992 for hearing and determination.

Such application shall contain the following information:

- (1) Name of Fund into which the funds are to be paid.
  - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (3) Summary of Structure and Benefits.
  - (4) Level of Administration Charge.
  - (5) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union party to the award. Where the union agrees with the application, the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 13 February 1992 may make application for exemption in accordance with subclause (d) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 13 February 1992.

**6. 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 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).

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- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.
- (c) How the Minimum Wage Applies to Juniors
- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under 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 (T11548 of 2004) and all previous safety net and state wage case adjustments.

## **PART IV - ALLOWANCES**

### **1. FIRST AID ALLOWANCE**

A full time employee (as defined) holding first aid qualifications from the Red Cross Society, St John Ambulance or similar body and appointed by the employer to perform first aid duty shall receive \$2.30 per working day

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## **2. MEAL ALLOWANCE**

An employee required to work for more than 10 hours on any one day without being notified on the previous day or earlier that he/she will be so required to work shall either be supplied with a meal by the employer or paid \$12.70.

Unless the employer advises an employee on the previous day or earlier that the amount of time to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second and/or subsequent meals or make payment in lieu thereof as above prescribed.

## **3. TRAVELLING ALLOWANCE**

Where the employee with the approval of the employer is required to use a private motor vehicle for the purposes of this clause the employee shall be paid 31 cents per kilometre travelled.

# **PART V - HOURS OF WORK, PENALTY PAYMENTS & OVERTIME**

## **1. HOURS AND DAYS OF WORK**

- (a) The ordinary hours of work for a full-time employee (as defined) shall be an average of 38 per week to be worked on one of the following basis:
- (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; or
  - (v) Any other work cycle agreed by an employer subject to this award and the majority of employees affected during which a weekly average of 38 ordinary hours are worked.
- (b) The ordinary hours of work prescribed in (a) hereof shall not exceed eight on any day and shall be worked consecutively within the span of hours of 5 a.m. - 8 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

**PROVIDED** that by agreement between an employer and the majority of employees affected the ordinary hours of work prescribed herein may be worked Monday to Sunday inclusive.

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**PROVIDED ALWAYS** that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day.

- (c) The ordinary hours for a casual employee (as defined) shall not exceed 8 on any one day and shall be worked consecutively within the span of hours of 5.00 a.m. - 8.00 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

**PROVIDED** that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day.

## **2. MEAL PERIOD**

- (a) Prior to the cessation of work each day after a period of no longer than 5 hours from commencement of work, an unpaid meal break of not less than thirty minutes, shall be taken at a time mutually agreed between the employer and the employee.

**PROVIDED** that for the purpose of ensuring completion of a task or tasks before change of tide or to ensure the timely return of shellfish to a growing or holding area in the water the employer and employee may agree to a break for a meal occurring at some other time prior to the cessation of work on that day.

- (b) Where an employee is expected to work continuously for a period of at least 4 hours, the employee shall be allowed a tea break during that period of at least 10 minutes without deduction of pay.

## **3. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENT**

- (a) Holidays

- (i) Subject to the provisions of Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay, subclause (d) all employees who perform work on a holiday as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay shall be paid at the rate of double time and one half.
- (ii) Subject to the provisions of subclause (a)(i) herein all employees who are required to work on any of the days prescribed in Part VI - WAGE RATES AND RELATED MATTERS Clause 5 - Holidays with Pay shall be paid for a minimum of three hours.

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(b) Overtime - Full-time Employees (as defined)

- (i) For work performed by an employee in excess of the number of hours or outside the span of hours specified in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.
- (ii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
- (iii) A full-time employee (as defined) shall work a reasonable amount of overtime as directed by the employer.

**PROVIDED** that by agreement between the employer and the employee, the employee may accrue time in lieu of the overtime payment prescribed in this clause. Such accrued time shall be calculated as time for time not at the overtime or penalty equivalent and may be taken as time off in lieu at the ordinary time rate at a time mutually agreed between the employer and the employee.

(c) Overtime, Saturday and Sunday Payment for Casual Employees (as defined)

- (i) For work performed on a Saturday payment shall be made at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.
- (ii) For work performed on a Sunday payment shall be made at the rate of double ordinary time.
- (iii) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Part V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first three hours and double time thereafter.

#### **4. TRAVELLING TIME**

- (a) An employee who on any day or from day to day is required to work at a job away from his usual work place shall at the direction of the employer present for such other work place at the usual starting time; but all time reasonably spent in reaching and returning from such work place (in excess of the time normally spent in travelling from the employees home to usual work place and returning) travelling time shall be paid at the ordinary rates of pay.
- (b) Where any employee is required to remain away from their usual place of residence the employee shall be paid for all expenses reasonably incurred whilst so absent.

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

### **1. ANNUAL LEAVE**

(a) Period of Leave

Subject to subclause (g) of this clause a period of 152 hours annual leave shall be allowed annually to a full-time employee (as defined) after 12 months continuous service with the same employer.

(b) Time of Taking Leave

Leave allowable under this clause for a full-time employee (as defined) shall be given by mutual agreement between the employer and the full-time employee (as defined) or at a time fixed by the employer within a period of 12 months after the right to annual leave provided that 2 weeks notice is given to the full-time employee (as defined).

(c) Payment in Lieu Prohibited

Except as provided in subclause (e) of this clause, payment shall not be made or accepted in lieu thereof.

(d) Payment for Period of Leave

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

(ii) In addition thereto, all full time employees (as defined) shall receive a loading of 17.5% on payments made for annual leave. Such loading shall not apply to proportionate leave on termination of service, excepting where termination by the employer is through no fault of the employee.

(e) Proportionate Leave on Termination of Service

If, after one month's service in any 12 monthly period, a full-time employee (as defined) leaves his employment by giving one week's notice, or the employment is terminated by the employer, as prescribed in Part II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 1 - Contract of Employment, subclause (b)(i), the employee shall be paid at the rate of 2.923 hours per completed week of service.

(f) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay, fall during an employees' annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

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(g) Broken Leave

Annual leave shall be taken in a continuous period provided that when the employee and the employer mutually agree then leave may be taken in more than one period however one such period must be of at least 7 consecutive days (5 working days).

(h) Disputes

Any dispute under this clause shall be processed in accordance with Part VII – CONSULTATION AND DISPUTE RESOLUTION, Clause 3 - Resolution of Disputes.

**2. SICK LEAVE**

(a) A full-time employee (as defined), entitled to sick leave payments 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) an employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
- (ii) the employee shall, wherever possible, inform the employer of his/her inability to attend for work prior to the commencement of such absence and as far as may be practicable, state the general nature of the illness or injury and the estimated duration of the absence;
- (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
- (iv) subject to subclause (v) hereof a full-time employee (as defined) shall be entitled to a sick leave credit of 76 ordinary hours per year;
- (v) During the first 6 months of employment sick leave shall accrue on a monthly basis at the rate of 6.33 hours of sick leave for each completed month of service with the employer which accrual shall be the limit of an employees entitlement to sick leave during that period.

(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.



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- (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/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

### **3. PARENTAL LEAVE**

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

- (a) Definitions

For the purposes of this clause:

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

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(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
  - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

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

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- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special maternity leave
  - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
  - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
  - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.
- (vii) Transfer to a safe job
  - (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
  - (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.
- (d) Paternity Leave
  - (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
    - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and

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- (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
  - (3) a statutory declaration stating:
    - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
    - (B) particulars of any period of maternity leave sought or taken by the mother, and
    - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
  - (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.
- (e) Adoption leave
- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
  - (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
    - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
    - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
  - (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

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- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental leave and other entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

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(iv) Transitional Arrangements - Annual Leave

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

(v) Transitional Arrangements - Sick Leave

An employee working part-time under this subclause 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.

(vi) Part-time Work Agreement

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

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(vii) Termination of Employment

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

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

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(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and sick leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to former position after a period of parental leave or part time work

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

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



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(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

#### **4. BEREAVEMENT LEAVE**

A full-time employee (as defined) 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 a day on which an employee was not otherwise expecting to work.

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.

#### **5. HOLIDAYS WITH PAY**

- (a) All full time employees shall be allowed the following days as paid holidays:

Christmas Day, Boxing Day, New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day (where it falls Monday to Friday inclusive), Queen's Birthday, Show Day (as defined) and Recreation Day in those districts where Hobart Regatta Day is not observed.

- (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.

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- (c) Where any of the aforementioned holidays, excluding Anzac Day, fall on a Saturday, Sunday or Rostered Day Off and are observed on the Saturday, Sunday or Rostered Day Off respectively, then the following ordinary working day shall be regarded as a holiday for the purposes of this award.
- (d) Where the employer and employees mutually agree then any other day may be substituted for any of the above named days.

## **PART VII - CONSULTATION AND DISPUTE RESOLUTION**

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

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## **2. PRODUCTIVITY AND EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the Scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer and the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.
- (h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of Part VII – CONSULTATION AND DISPUTE RESOLUTION, Clause 3 - Resolution of Disputes.

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### **3. RESOLUTION OF DISPUTES**

Any industrial dispute arising shall be dealt with as follows:-

- (a) the matter should first be discussed between the employee and his/her immediate supervisor. At the employee's option the union delegate may also be present;
- (b) if not settled, the matter shall be submitted by the union representative or union officer to the employer;
- (c) if not settled, the matter shall be determined by the Tasmanian Industrial Commission whose decision will be final;
- (d) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, its officials, the union and its members, will take all possible action to settle any dispute within 7 days of notification of the dispute to the employer;
- (e) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

## **PART VIII - OCCUPATIONAL HEALTH & SAFETY, TOOLS AND AMENITIES**

### **1. CLOTHING**

- (a) Where the nature of the work requires an employee to wear waterproof waders, overpants, waterproof boots and gloves and/or raincoats they shall be provided by the employer free of cost to the employee on a fair wear and tear basis, and shall be of such quality as is appropriate to the nature of the work.
- (b) Overalls or other suitable protective clothing shall be provided where the nature of the work causes undue wear or deterioration to normal working clothes if requested by the employee provided that one set of such clothing shall be supplied to all employees only after 3 months service, and thereafter at intervals of not less than 6 months or otherwise agreed by the employer and the employee.

### **2. FIRST AID**

The employer shall provide and maintain, in accordance with the *Industrial Health and Safety Act (1977)* and Regulations (1979), a first aid outfit including an affixed listing of current employees holding a first aid certificate.

### **3. SAFETY EQUIPMENT**

All safety equipment issued by the employer must be worn or used by an employee at the direction of the employer.

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## **PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. RIGHT OF ENTRY OF UNION OFFICIALS**

Right of entry for a duly accredited representative of The Australian Workers' Union, Tasmania Branch shall be in accordance with the provisions of section 77 of the *Industrial Relations Act 1984*.

P C Shelley  
**DEPUTY PRESIDENT**

16 August 2004