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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application for award or variation of award

The Association of Professional Engineers, Scientists and Managers, Australia
(T6447 of 1996)

PROFESSIONAL ENGINEERS AND SCIENTISTS (PRIVATE INDUSTRY) AWARD

Award variation - salaries - third \$8.00 Safety Net Adjustment - consent matter - application granted - award varied - operative date ffpp 27 August 1996

ORDER BY CONSENT -

**No. 2 of 1996
(Consolidated)**

A NEW CLAUSE IS SUBSTITUTED FOR CLAUSE 8 - SALARIES AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Professional Engineers and Scientists (Private Industry) Award".

2. SCOPE

This award applies to the whole of Tasmania to any person or persons, or class of persons employed in performing engineering and/or scientific duties as hereinafter defined but not including:

- (a) Professional engineers and/or scientists employed in Federal or State Government departments or instrumentalities, or Local Government authorities; or the Marine Board of Hobart, the Port of Launceston Authority, Port of Devonport Authority, Burnie Port Authority, or professional engineers and/or scientists falling within the scope of the following awards:

Hospitals

Metal and Engineering Industry

Medical Diagnostic Services (Private Sector)

Medical Practitioners

- (b) Professional scientists employed by the owners or operators of a mine or mining operation defined in the Mines Inspection Act 1986.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation on the first full pay period to commence on or after 27 August 1996.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Professional Engineers and Scientists (Private Industry) Award No. 1 of 1994 (Consolidated), No. 2 of 1994, No. 3 of 1994, No. 4 of 1994, No. 1 of 1995, No. 2 of 1995, No. 3 of 1995 and No. 1 of 1996.

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

6. PARTIES AND PERSONS BOUND

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

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

The Association of Professional Engineers, Scientists and Managers, Australia and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Professional engineering duties' shall mean duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires qualifications of the employee as (or at least equal to those of) a Graduate member of The Institution of Engineers, Australia, or a Corporate Member of the Institution of Radio and Electronics Engineers Australia.

'Professional scientific duties' shall mean duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires qualifications of the employee as specified in the following Academic Schedule:

Academic Schedule

- (a) A degree in Science from an Australian, New Zealand or United Kingdom University or from an Australian Tertiary Educational Institution.
- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of Corporate membership.
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grades of Graduate membership or Corporate membership.
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either The Australasian Institute of Mining and Metallurgy for admission to the grade of Junior or Corporate membership, or the Institution of Metallurgists (London) for admission to the grades of Graduate or Associate membership.
- (e) Academic qualifications acceptable to The Australian Institute of Agricultural Science for admission to the grade of Corporate membership.
- (f) Academic qualifications acceptable to The Australian Institute of Food Science and Technology for admission to the grades of Graduate or Corporate membership.
- (g) Academic qualifications acceptable to a Pharmacy Board or Council within the Commonwealth of Australia provided that the award shall not apply to pharmacists employed in a retail pharmacy shop.

'Professional engineer' shall mean an adult person qualified to carry out professional engineering duties as above defined. The term "professional engineer" shall embrace and include "qualified engineer" and "experienced engineer" as hereinafter defined.

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'Professional scientist' shall mean an adult person qualified to carry out professional scientific duties as above defined. The term "professional scientist" shall embrace and include "qualified scientist" and "experienced scientist" as hereinafter defined.

'Qualified engineer' shall mean a "professional engineer" other than an "experienced engineer" as hereinafter defined, that is, it shall mean a person who is or is qualified to become a Graduate member of The Institution of Engineers, Australia.

'Qualified scientist' shall mean a "professional scientist" other than an "experienced scientist" as hereinafter defined, that is, it shall mean a person possessing academic qualifications as specified in the abovementioned Academic Schedule.

'Non graduate engineer' shall mean a "qualified engineer" who is not a "graduate engineer" as hereinafter defined.

'Graduate engineer' shall mean a "qualified engineer" who is the holder of a University Degree (4 or 5 years course) recognised by The Institution of Engineers, Australia, or is the holder of a degree, diploma or other testamur which:

- (a) has been issued by a Technical University, an Institute of Technology, a European Technical High School (Technische Hochschule) or Polytechnic, or other similar educational establishment; and
- (b) is recognised by the Institution as attaining a standard similar to a University degree; and
- (c) has been issued following:
 - (i) a course of not less than four years' duration for a full-time course after a standard of secondary education not less than the standard of examination for matriculation to an Australian University; or
 - (ii) a part-time course of sufficient duration to attain a similar standard as a four years' full-time course, after a similar standard of secondary education.

'Graduate scientist' shall mean a qualified scientist who has completed the requirements for the award of a university or institute of technology degree (three, four or five year course) qualifying a person in accordance with the abovementioned Academic Schedule.

'Experienced engineer' shall mean a "professional engineer" with the undermentioned qualifications in any particular employment the adequate discharge of any portion of the duties of which employment requires qualifications of the employee as (or at least equal to those of) a Member of The Institution of Engineers, Australia.
The aforesaid qualifications are as follows:

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- (a) that he or she is a Member of the said Institution; or
- (b) that he or she, having graduated in a four-year or a five-year course at a University recognised by The Institution of Engineers, Australia, has had five years' experience on professional engineering duties since becoming a "qualified engineer"; or
- (c) that he or she, not having so graduated, has had six years of such experience.

'Experienced scientist' shall mean a "professional scientist" possessing the following qualifications and engaged in any particular employment the adequate discharge of any portion of the duties of which employment requires possession of such qualifications.

The aforesaid qualifications are that he or she shall have had further experience on professional scientific duties after obtaining his or her qualification per the abovementioned Academic Schedule, as under:

- (a) when a Graduate of a 4 or 5 year course - 4 years experience
- (b) when a Graduate of a 3 year course - 5 years experience.

8. SALARIES

- (a) The minimum annual salaries payable for the performance of professional engineering duties as defined shall be:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Annual Salary \$
Level 1 - Graduate Engineer	130	28203	1248	29451
Level 2 - Experienced Engineer	160	34711	1248	35959
Level 3 - Professional Engineer	180	39050	1248	40298
Level 4 - Professional Engineer	210	45558	1248	46806

PROVIDED that:

- (i) the rate shown above for a Graduate Engineer is the rate that applies when he or she first commences in the work-force;
- (ii) the competence and salary of a Level 1 engineer will be reviewed at least annually;
- (iii) in instances where the review confirms that the competence and skill of a Level 1 engineer has increased, the engineer's salary shall be increased by an amount of not less than 5% of the pre-existing salary.

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(b) The minimum annual salaries payable for the performance of professional scientific duties as defined shall be:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Annual Salary \$
Level 1 - Graduate Scientist	125	27118	1248	28366
Level 2 - Experienced Scientist	160	34711	1248	35959
Level 3 - Professional Scientist	180	39051	1248	40299
Level 4 - Professional Scientist	210	45558	1248	46806

PROVIDED that:

- (i) the rate shown above for a Graduate Scientist is the rate that applies when he or she first commences in the workforce;
- (ii) the competence and salary of a Level 1 scientist will be reviewed at least annually;
- (iii) in instances where the review confirms that the competence and skill of a Level 1 scientist has increased, the scientist's salary shall be increased by an amount of not less than 5% of the pre-existing salary.

(c) Work Level Descriptions

Level 1 - Graduate Engineer

An engineer at this Level performs professional engineering tasks and/or undertakes minor engineering projects to established engineering principles, techniques and methods. These activities are performed under professional supervision.

It is expected that a Level 1 engineer will be provided with work and training opportunities that make possible the progressive acquisition of skills and competence.

Level 1 - Graduate Scientist

A scientist at this Level performs professional scientific tasks and/or undertakes minor scientific projects to established scientific principles, techniques and methods. These activities are performed under professional supervision.

It is expected that a Level 1 scientist will be provided with work and training opportunities that make possible the progressive acquisition of skills and competence.

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Level 2 - Experienced Engineer

Following development through Level 1, a Level 2 engineer is an experienced engineer who plans and conducts professional engineering work without detailed supervision, but with guidance on unusual features and who is usually engaged on more responsible engineering assignments requiring substantial professional experience.

Level 2 - Experienced Scientist

Following development through Level 1, a Level 2 scientist is an experienced scientist who plans and conducts professional scientific work without detailed supervision, but with guidance on unusual features and who is usually engaged on more responsible scientific assignments requiring substantial professional experience.

Level 3 - Professional Engineer

A Level 3 professional engineer performs duties requiring the application of mature professional engineering knowledge. With scope for individual accomplishment and co-ordination of more difficult assignments, the professional engineer deals with problems for which it is necessary to modify established guides and devise new approaches.

The professional engineer may make some original contribution or apply new professional engineering approaches and techniques to the design or development of equipment or special aspects of products, facilities, and buildings.

Recommendations may be reviewed for soundness of judgement but are usually regarded as technically accurate and feasible. The professional engineer makes responsible decisions on matters assigned, including the establishment of professional engineering standards and procedures, consults, recommends and advises in specialty engineering areas.

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

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

Level 3 - Professional Scientist

A Level 3 professional scientist performs duties requiring the application of mature professional scientific knowledge. With scope for individual accomplishment and co-ordination of more difficult assignments, the professional scientist deals with problems for which it is necessary to modify established guides and devise new approaches.

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The professional scientist may make some original contribution or apply new professional scientific approaches and techniques to the design or development of equipment or special aspects of products, facilities, and buildings.

Recommendations may be reviewed for soundness of judgement but are usually regarded as technically accurate and feasible. The professional scientist makes responsible decisions on matters assigned, including the establishment of professional scientific standards and procedures, consults, recommends and advises in specialty scientific areas.

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

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

Level 4 - Professional Engineer

A Level 4 professional engineer is required to perform professional engineering work involving considerable independence in approach, demanding a considerable degree of originality, ingenuity and judgement, and knowledge of more than one field of engineering, or expertise (for example, acts as his or her organisation's technical reference authority) in a particular field of professional engineering.

The professional engineer:

- (i) initiates or participates in short or long range planning and makes independent decisions on engineering policies and procedures within an overall program;
- (ii) gives technical advice to management and operating departments;
- (iii) may take detailed technical responsibility for product development and provision of specialised engineering systems, facilities and functions;
- (iv) co-ordinates work programmes; and
- (v) directs or advises on use of equipment and material.

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

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

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The professional engineer supervises a group or groups including professional engineers and other staff, or exercises authority or technical control over a group of professional staff, in both instances engaged in complex engineering applications.

Level 4 - Professional Scientist

A Level 4 professional scientist is required to perform professional scientific work involving considerable independence in approach, demanding a considerable degree of originality, ingenuity and judgement, and knowledge of more than one field of science, or expertise (for example, acts as his or her organisation's technical reference authority) in a particular field of professional science.

The professional scientist:

- (i) initiates or participates in short or long range planning and makes independent decisions on scientific policies and procedures within an overall program;
- (ii) gives technical advice to management and operating departments;
- (iii) may take detailed technical responsibility for product development and provision of specialised scientific systems, facilities and functions;
- (iv) co-ordinates work programmes; and
- (v) directs or advises on use of equipment and material.

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

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

The professional scientist supervises a group or groups including professional scientists and other staff, or exercises authority or technical control over a group of professional staff, in both instances engaged in complex scientific applications.

9. ANNUAL LEAVE

- (a) On completion of each 12 months' continuous service a professional engineer or scientist shall be entitled to four weeks' annual leave, exclusive of public holidays, paid at his or her normal rate of remuneration as defined in (b) hereof. Such leave shall be granted by the employer on the same conditions as are applicable from time to time to the majority of employees employed in the particular establishment in which the professional engineer or scientist is employed.

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PROVIDED that if, after one month of completed service in any twelve monthly period, an employee lawfully leaves such employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid as follows:

12.67 hours for each completed month of continuous service. This service is in respect of leave which has not been granted.

- (b) For the purpose of this clause, in the expression "normal rate of remuneration":
- (i) **'normal rate'** shall mean the rate payable to the professional engineer or scientist immediately prior to proceeding on leave or the average rate payable to the professional engineer or scientist over the three months immediately prior to proceeding on leave, whichever is the greater, and
 - (ii) **'remuneration'** shall mean the salary prescribed by this award under Clause 8 - Salaries, together with all extraneous payments prescribed by this award.

PROVIDED that monies paid pursuant to Clause 17 - Hours of Duty, subclause (b)(i), and Clause 15 - Fares, Travelling Expenses and Travelling Time, of this award, in respect of overtime worked and fares and travelling allowance shall not be taken into account for the purpose of this clause.

10. ANNUAL LEAVE LOADING

In respect of annual leave a professional engineer or scientist shall be paid a loading calculated at the rate of 17.5% of his or her entitlement under Clause 9 - Annual Leave of this award.

PROVIDED that:

- (a) in no case shall there be an entitlement to an amount in excess of the Australian Bureau of Statistics' Average Weekly Earnings per employed male unit (Catalogue No. 6302.0, Full-time adults, ordinary time earnings, Tasmania) for the September quarter of the year preceding the year in which the date of the accrual of the annual leave falls; such average weekly earnings being as at the 1991 September quarter \$576.90.
- (b) no loading shall be payable under this clause on termination of employment.
- (c) professional engineers and scientists and their employers may mutually agree on an arrangement other than the loading provided in this clause - such arrangements to stand in place of the loading. In no case shall the arrangement made under this provision give a value of less than the value of the loading.

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11. BEREAVEMENT LEAVE

A professional engineer or scientist shall be entitled to a maximum of two days' leave without loss of pay on each occasion and on production of satisfactory evidence of the death in Australia of the professional engineer or scientist's husband, wife, father, mother, brother, sister, parents-in-law, child or stepchild. For the purposes of this clause the words "wife" and "husband" shall include de facto wife or husband and the words "father" and "mother" shall include foster father and mother and stepfather and mother.

PROVIDED that a professional engineer or scientist shall be entitled to a maximum of two days' leave without loss of pay on each occasion and on production of satisfactory evidence of the death outside of Australia of the professional engineer or scientist's husband, wife, father, or mother and where such professional engineer or scientist travels outside of Australia to attend the funeral.

12. DISCLOSURE OF QUALIFICATIONS

- (a) A professional engineer or scientist who is employed in or who is an applicant for employment covered by this award shall if and when required so to do by his or her employer or an employer to whom he or she has applied for employment produce to his or her employer or that employer written evidence that he or she possesses or has acquired the qualifications of qualified engineer/scientist or experienced engineer/scientist (as the case may be).
- (b) Where a professional engineer or scientist has failed to produce to his or her employer or to an employer to whom he or she has applied for employment written evidence that he or she possesses or has acquired the qualifications of qualified engineer/scientist or experienced engineer/scientist (as the case may be) and subsequently claims to be entitled to payment at the rate prescribed by this award for his or her employment by that employer in respect of any period during which he or she has failed to produce that evidence it shall be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the professional engineer or scientist possessed or had acquired the qualifications of qualified engineer/scientist or experienced engineer/scientist (as the case may be).

13. ENTERPRISE AGREEMENTS

- (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.

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- (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 or unions 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 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.

14. EQUIPMENT AND SPECIAL CLOTHING

Except where a professional engineer or scientist elects to provide his or her own equipment and special clothing he or she shall be provided free of cost all such equipment and special clothing reasonably required for the adequate discharge of his or her duties.

PROVIDED that such equipment or clothing shall remain the property of the employer.

15. FARES, TRAVELLING EXPENSES AND TRAVELLING TIME

A professional engineer or scientist shall be reimbursed all reasonable expenses incurred while travelling on his or her employer's business, including where appropriate excess travelling time not provided for by Clause 17 - Hours of Duty, subclause (b).

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16. HOLIDAYS

- (a) A professional engineer or scientist shall be entitled, without loss of pay, to public holidays as follows: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day or such other days as are generally observed in a locality as a substitute for any of the said days respectively.

PROVIDED that if the majority of employees in the particular establishment is entitled to a holiday on any day or days other than the days specified herein, a professional engineer or scientist shall be also entitled to a holiday on such day or days.

- (b) All work performed on a public holiday shall be deemed to be work in excess or outside of normal hours of duty and shall be paid or compensated for in accordance with Clause 17 - Hours of Duty, subclause (b) of the award.

17. HOURS OF DUTY

- (a) The ordinary hours of duty of a professional engineer or scientist shall not exceed the normal hours of duty as are applicable from time to time to the majority of employees in the particular establishment in which he or she is employed.

- (b) An employer shall compensate a professional engineer or scientist for all authorised time worked regularly in excess of normal hours of duty by:

(i) payment of the same penalty rate and upon the same conditions as are applicable from time to time to the majority of employees employed in the particular establishment in which the professional engineer or scientist is employed; or

(ii) taking this factor into account in the fixation of annual remuneration; or

(iii) granting special additional remuneration; or

(iv) granting other compensation such as special additional leave;

as may be mutually agreed.

18. NOTIFICATION OF SALARY AND CLASSIFICATION

A professional engineer or scientist, on engagement, shall be advised in writing of his or her salary and any normal practice as regards remuneration reviews, where such remuneration is in excess of award prescription. Upon request, an employer shall advise a professional engineer or scientist of his or her award classification which the employer considers to be appropriate having regard to the duties performed by the professional engineer or scientist concerned.

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19. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(c) Eligibility for Maternity Leave

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

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

(d) Certificate

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

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

(e) Notice Requirements

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

(f) Transfer to a Safe Job

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

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

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(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

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

(i) Special Maternity Leave and Sick Leave

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

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- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.

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- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

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

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(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.

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

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

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

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

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

- (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

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(3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

(i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.

(ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:

(1) the birth occurring earlier than the expected date; or

(2) the death of the mother or the child; or

(3) other compelling circumstances.

(iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

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

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

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

(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.

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(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

(k) Return to Work after Paternity Leave

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

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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 his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

'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.

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(c) Eligibility

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

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

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

(d) Certification

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

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (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.

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(e) Notice Requirements

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

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- (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (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.

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- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (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.

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

'Spouse' includes a de facto spouse.

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

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

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

(b) Entitlement

With the agreement of the employer:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (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.

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(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.

(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:

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- (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.
 - (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.

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(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.
- (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.

20. PROFESSIONAL DEVELOPMENT

An employer may grant permission to a professional engineer or scientist to attend a conference, seminar, or short term study course which will assist the engineer or scientist to keep himself or herself informed of scientific and/or technological developments of relevance to the business of the employer.

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Where the conference, seminar, or short term study course has been approved by the employer and permission has been granted by the employer for the professional engineer or scientist to attend, the employer shall meet reasonable associated costs and shall continue the payment of salary to the professional engineer or scientist or make such other arrangements as may be mutually agreed.

PROVIDED that in all cases where permission to attend has been granted, the professional engineer or scientist shall suffer no loss of continuity of service as a result of such attendance.

21. PROFESSIONAL EMPLOYEES' REPRESENTATIVE

A professional engineer or scientist appointed or elected as a representative of members of The Association of Professional Engineers and Scientists, Australia in the employer's establishment, or in the separate establishments of the employer where there is more than one, shall, upon notification thereof by an official of the Association to the employer, be recognised as the accredited representative of the Association and he or she shall be allowed the necessary time during working hours to interview the employer or representative on matters affecting the employees whom he or she represents.

Subject to the prior approval of the employer, the accredited representative of the Association shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited official of the Association on legitimate Association business.

22. SICK LEAVE

A professional engineer or scientist absent from duty on account of personal ill-health or injury due to any cause shall be entitled to payment of sick leave to the same extent and upon the same conditions as are applicable from time to time to the majority of employees employed in the particular establishment in which the professional engineer or scientist is employed.

PROVIDED that the minimum quantum of sick leave entitlement shall be 10 days per annum, fully cumulative.

23. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating 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 Association shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.

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In acknowledgment of the fact that employees subject to this award are often in the minority in particular establishments, regard will be had for consultative mechanisms which may already be in place and have application to the enterprise as a whole.

- (c) An employer may direct an employee professional engineer or scientist to carry out such duties as are within the limits of an employee's skills, 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.

24. SUPERANNUATION

- (a) Contribution

As from 14 October 1989, an employer shall make a contribution equivalent to 3% of ordinary time earnings into an approved superannuation fund in respect of all employees who are paid under this award. Such earnings shall exclude overtime and payments made by virtue of Clause 15 - Fares, Travelling Expenses and Travelling Time of this award.

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

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

'The association' shall mean The Association of Professional Engineers and Scientists, Australia.

- (c) Fund

(i) Contributions determined in accordance with subclause (a) of this clause shall, subject to subclause (e) of this clause, be made into either of the following nominated approved funds:

- (1) Professional Employees Superannuation Fund;
- (2) Tasplan.

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- (ii) If the association is concerned about a fund selected pursuant to subclause (e) it may, within six months of the date of operation of this clause or the date of fund selection (whichever is the latter), challenge before the Tasmanian Industrial Commission the suitability of the fund.
- (d) Fund Membership
- (i) Employers shall make employees aware of their entitlements under this clause and offer them the opportunity to join an appropriate fund in accordance with subclause (c).
 - (ii) In the event the employee elects not to join the fund, the employer shall remind the employee, in writing, of his or her entitlements, within a period of a further six months. Should an employee subsequently complete the necessary forms and become a member of the fund, the contributions prescribed in subclause (a) hereof shall commence from the pay period commencing after the completion of such forms.
- (e) Exemptions
- (i) In lieu of the contributions specified in subclause (a) hereof, the benefits offered to employees by a existing approved superannuation fund may be improved, subject to the rules of the fund, such that the overall costs of such benefits is not less than the equivalent of a 3% contribution by the employer. Such improvements shall be in place by the date in subclause (a) hereof and contain the following provisions:
 - (1) an employer contribution of at least 3%;
 - (2) no requirement for an associated employee contribution.Any such improvements made on or from 1 January 1987 may be taken into account.
 - (ii) Leave is reserved to any employer to apply for exemption from this award on the grounds of the standard of existing superannuation arrangements provided by the employer as at 14 October 1989 or the employer's financial capacity to pay.
 - (iii) For the purpose of this clause, the following company is exempt from contributing to the funds nominated in subparagraph (i) of paragraph (c) Fund, and contributions shall be made in accordance with paragraph (a), Contribution, into the fund set out below:

<u>Company</u>	<u>Fund</u>
Johnston McGee and Gaudy Pty Ltd.	Market Leaders Fund - SMF Funds Management Ltd.

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(f) Absence from Work

(i) Paid Leave

Contributions shall continue whilst a member of a fund is absent on paid leave such as annual leave, public holiday, jury service, sick leave and bereavement leave.

(ii) Unpaid Leave

Contributions shall not be required to be made in respect of any absence from work without pay.

(iii) In the event of an eligible employee's absence from work due to work related injury or sickness, contributions shall continue for a period of the absence (subject to a maximum of 52 weeks' total absence for each injury or sickness) provided that the employee is receiving payments pursuant to workers' compensation legislation.

25. TERMINATION OF EMPLOYMENT

Employment shall be terminated by one month's notice by either party, or by the payment by either party of an amount equal to a month's salary, as the case may be.

PROVIDED that:

- (a) The period of notice to be given to or by a professional engineer or scientist with up to six months' service with a particular employer or the amount of payment to be made by either party shall be mutually agreed between the professional engineer or scientist and the employer.
- (b) Nothing herein contained shall affect the right of the employer to dismiss a professional engineer or scientist without notice for neglect of duty or misconduct.

26. VEHICLE ALLOWANCE

In cases where it is mutually agreed that a professional engineer or scientist will be required to use his or her private vehicle on his or her employer's business, a professional engineer or scientist shall be paid reasonable compensation, but in no case shall he or she receive payment at a rate less than the equivalent of 38 cents per kilometre so travelled.

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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.

R.J. Watling
COMMISSIONER

28 August 1996