

**TASMANIAN INDUSTRIAL COMMISSION**

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

**Tasmanian Trades and Labor Council**  
(T.3077 of 1991)

**SHELLFISH INDUSTRY AWARD**

COMMISSIONER R J WATLING

9 December 1992

Award variation - insertion of "Parental Leave" clause in lieu of  
"Maternity Leave" clause

ORDER -

**No. 3 of 1992**  
**(Consolidated)**

AMEND THE SHELLFISH INDUSTRY AWARD BY DELETING ALL CLAUSES CONTAINED  
THEREIN AND INSERT IN LIEU THEREOF THE FOLLOWING:

### 1. TITLE

This award shall be known as the Shellfish Industry Award.

### 2. 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.

### 3. ARRANGEMENT

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

This award shall come into operation on and from 1 January 1993.

#### **5. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes No. 1 of 1992 (Consolidated) and No. 2 of 1992.

#### **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 engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
  - (i) the Australian Workers' Union , Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:
  - (i) the Tasmanian Confederation of Industries.

#### **7. 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.

'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.

'Full-time employee' means any person who is engaged on an ongoing full time basis on one of the work cycles described in Clause 17 - Hours and Days of Work, subclause (a).

**Shellfish Farm Attendant - Level 1**  
**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 76Z)**

A Shellfish Farm Attendant - Level 1 means an employee who has not completed at least four months service in the industry as prescribed in Clause 2 - 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**  
**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 80Z)**

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

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.

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

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.

'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 11 paid holidays per year.

## **8. WAGE RATES**

### **1. WAGES - ADULTS**

- (a) Adult employees in a classification level undermentioned shall be paid the base rate and supplementary payment appearing opposite that classification.

| Classification Level                             | Wage<br>Relativity | Base<br>Rate | Supplementary<br>Payment | Award<br>Rate |
|--|--------------------|--------------|--------------------------|---------------|
| Shellfish Farm Attendant<br>(as defined) Level 1 | 76%                | 277.60       | 39.50                    | 317.10        |
| Shellfish Farm Attendant<br>(as defined) Level 2 | 80%                | 292.20       | 41.60                    | 333.80        |
| Shellfish Farm Attendant<br>(as defined) Level 3 | 93%                | 339.60       | 48.40                    | 388.00        |
| Shellfish Farm Attendant<br>(as defined) Level 4 | 100%               | 365.20       | 52.00                    | 417.20        |

- (b) The amount appearing in the column headed Supplementary Payment in this clause is to be absorbed against any overaward payment being paid by an employer as from the first full pay period on or after 13 February 1992.

### **2. JUNIORS**

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

|   |     |
|---|-----|
| Under 17 years of age                             | 65% |
| Over 17 years of age but under<br>18 years of age | 75% |



**9. 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 Clause 12 - Contract of Employment, subclause (d) (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 Clause 16 - 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.

(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 Clause 26 - Resolution of Disputes.

**10. 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.

**11. COMPASSIONATE 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.

**12. CONTRACT OF EMPLOYMENT**

(a) General

(i) Upon commencing work with an employer all employees shall be classified under a level as prescribed in Clause 8 - Wage Rates of this award.

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

(1) Written advice indicating which classification level applies,

(2) Written advice as to the work cycle provided by Clause 17 - 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) Full-Time Employees (as defined)

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

(c) Casual Employees (as defined)

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



- (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 Clause 8 - 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 Clause 15 - Holiday, Saturday, Sunday and Overtime Payment and/or Clause 16 - 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 Clause 8 - Wage Rates (i.e. this calculation shall exclude the 20% loading prescribed in subclause (ii) herein).
- (d) 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 Clause 26 - Resolution of Disputes contained in this award.

### **13. 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.

#### **14. FIRST AID**

- (a) 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.
- (b) 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 \$1.75 per working day.

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

- (a) Holidays
  - (i) Subject to the provisions of Clause 16 - Holidays with Pay, subclause (d) all employees who perform work on a holiday as prescribed in Clause 16 - 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 Clause 16 - Holidays with Pay shall be paid for a minimum of three hours.
- (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 Clause 17 - 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 Clause 17 - 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.

**16. 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.
- (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.

**17. 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.

**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.

#### **18. 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 \$5.00

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.

#### **19. 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.

**20. 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 Clause 7 - Definitions 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.

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

Subject to the provisions of Clause 8 - 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.

**22. PARENTAL LEAVE**

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

**PART A - MATERNITY LEAVE**

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(c) Eligibility for maternity leave

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

**'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
  - (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.

(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.

(1) Replacement Employees

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

**PART C - ADOPTION LEAVE**

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

**`Spouse`** includes a de facto spouse.

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

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

(c) **Eligibility**

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

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

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

(d) Certification

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

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

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
  - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave.
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
    - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and employee.
  - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.



(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

(ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

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

(l) Return to Work After Adoption Leave

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



- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(m) Replacement Employees

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

**PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

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

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

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

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

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

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

(b) Entitlement

With the agreement of the employer:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.
- (ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

- (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

- (i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:

- (1) that the employee may work part-time;
- (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- (3) upon the classification applying to the work to be performed; and
- (4) upon the period of part-time employment.

- (ii) The terms of this agreement may be varied by consent.

- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

- (iv) The terms of this agreement shall apply to the part-time employment.

(i) Termination of Employment

- (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
  - (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.
- (j) Extension of Hours of Work
- An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (h).
- (k) Nature of Part-time Work
- The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.
- (l) Inconsistent Award Provisions
- An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:
- (i) limiting the number of employees who may work part-time;
  - (ii) establishing quotas as to the ratio of part-time to full-time employees;
  - (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or
  - (iv) requiring consultation with, consent of or monitoring by a union;



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

(m) Replacement Employees

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

**23. PAYMENT OF WAGES**

- (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.

**24. PREFERENCE OF EMPLOYMENT**

- (a) Providing all persons are adequately experienced and otherwise competent preference shall be given on engagement to members of the Australian Workers' Union, Tasmania Branch or those who give an undertaking to become a member within 14 days.
- (b) The owner of the business, the spouse and children of the owner shall not be subject to the provisions of this clause.

- (c) Conscientious objectors who hold a certificate pursuant to section 32(8) of the Industrial Relations Act 1984, shall not be subject to the provisions of this clause.

**25. 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 Clause 26 - Resolution of Disputes.

#### **26. 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.

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

For the purposes of interviewing employees on legitimate union business a duly accredited Australian Workers' Union, Tasmania Branch representative shall have the right to enter the employer's premises at a mutually agreed time provided:

- (a) that he/she produces his/her authority to the employer or such other person as may be appointed by the employer to be the senior person present;
- (b) that no one representative visits the premises more than once in each week.

- (iii) that if an employer alleges that a representative is unduly interfering with his/her work or is creating dissatisfaction amongst employees or is offensive in his/her methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.

#### **28. SAFETY EQUIPMENT**

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

#### **29. 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.
- (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.

### **30. 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.
- (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.

(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:

- (a) Name of Fund into which the funds are to be paid.
  - (b) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (c) Summary of Structure and Benefits.
  - (d) Level of Administration Charge.
  - (e) 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.

**31. TRAVELLING ALLOWANCE AND 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.
- (c) 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.

