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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

ORDER BY CONSENT

MUSICIANS AWARD

No. 1 of 2004

(Consolidated)

CLAUSE 19 IS DELETED; CLAUSES ARE RENUMBERED; CLAUSES 4, 5, 8 and 23 ARE VARIED; AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Musicians Award".

2. SCOPE

This award shall apply to work performed by private employees engaged in the following occupations:

- (a) musicians; and
- (b) instrumental performers, and any other persons who receive remuneration for musical services. Arrangers and copyists of music, composers of music, vocalists who regularly sing as an integral part of a band, conductors of instrumentalists, conductors of singers, musical producers, musical co-ordinators, balancing officers of music employed as an integral part of a band or orchestra of performers.

PROVIDED that sound mixers who are not employed as an integral part of a band or orchestra of performers, sound engineers, sound recordists, road crews, stage managers and lighting supervisors shall not be deemed to be persons carrying out musical services as herein defined, and shall not be subject to this award.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the beginning of the first full pay period to commence on or after 1 August 2004.

5. SUPERSESSION AND SAVINGS

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

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 Musicians' Union of Australia, Hobart Branch 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

'Band', except as otherwise provided, shall have the same meaning as **'orchestra'**.

'Call' shall mean an appearance for either a performance or a rehearsal of not less than 3 hours duration.

'Casual employee' means any employee who is employed on a casual basis and includes any person who is employed for a period not exceeding 5 days at any one time.

'Group/Band/Orchestra leader' means an employee who plays, supervises and directs the musicians in their duties.

'Musical services' means work performed in:

- (a) Any class of work in which employee musicians are required to accompany artists; provided that for the purposes of this definition the word **'artists'** shall not mean or include a vocalist who regularly sings as an integral part of a group, band or orchestra.
- (b) Grand opera, grand ballet, concerts or religious performances, general theatrical entertainment inclusive of pantomime and variety shows, vaudeville, revue, comic opera, musical comedy, drama, burlesque, minstrel shows, circuses and any other class of work in which employee musicians are required to accompany artists; provided that for the purposes of this definition the word **'artists'** shall not mean or include a vocalist who regularly sings as an integral part of a group, band or orchestra.
- (c) All other work performed by musicians.

'Orchestra' means a combination of 2 or more musicians.

'Principal'

- (a) **'Principal - Dance Band/Rock group'** means lead alto saxophone, lead tenor saxophone, baritone saxophone, lead trumpet, lead trombone, bass trombone and principal rhythm player (as appointed by the Musical Director).

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- (b) **'Principal'** or **'Principal Instrument'** or **'Principal Instrumentalist'** in any orchestra or band other than a dance band shall mean and include; Repetiteur violin (that is, a violin sitting with the leader), principal second violin, principal viola, principal cello, principal bass, principal flute, principal piccolo, principal oboe, principal cor anglais, principal clarinet, principal E flat clarinet, principal brass clarinet, principal bassoon, principal contra bassoon, principal saxophone, principal and third horn, principal cornet, principal trumpet, principal and bass trombone, principal euphonium, principal tuba, principal tympani, principal percussion, principal vibracussion, principal harp, principal piano, principal organ; the first of any one or more musical instruments, other than in the foregoing; where there is only one player of any one instrument in an orchestra the player of that instrument.

'Regular weekly part-time employee' means an employee regularly engaged in public ballrooms for from 2 to 5 performances each week for a period of not less than 4 weeks duration.

'Show Day' shall mean the local Show Day in cities, towns or districts of the State, when that day, in the locality of the employer's premises, occurs on an employee's ordinary working day. Providing that the provisions of this definition shall not apply in a manner having the effect of enabling an employee to take more than one holiday for this purpose.

'Specialty entertainment' means entertainment provided by famous artists imported or otherwise who perform for a limited season of less than 6 days of calls in any one State.

'Union' means the Musicians' Union of Australia.

'Vocalist' shall mean a person who sings as a soloist and is accompanied by himself or a band or an orchestra.

'Weekly Employee' means an employee engaged by the week for at least 6 calls in a week to be performed within 6 consecutive calendar days excluding Sundays provided that in grand opera, ballet, religious and symphonic concerts a weekly employee shall be engaged for at least 7 calls per week.

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8. WAGE RATES

A. WEEKLY EMPLOYEES

- (a) The minimum weekly rate of pay for all weekly employees (as defined in Clause 7 - Definitions) shall be \$17.29 per hour (or \$16.76 per hour for employees engaged to perform in grand opera, ballet, religious or symphonic concerts) multiplied by the number of hours worked.
- (b) In addition to the minimum weekly rate prescribed in paragraph (a) of this subclause an employee employed in musical services (as defined in item (a) of the definition thereof in Clause 7 - Definitions) shall be paid an amount of 5% of the minimum weekly rate so long as he/she is so employed.

B. REGULAR WEEKLY PART-TIME EMPLOYEES AND CASUAL EMPLOYEES

- (a) The minimum rate of pay for all regular weekly part-time employees (as defined in Clause 7 - Definitions) shall be \$17.29 per hour (or \$16.76 per hour for employees engaged to perform in grand opera, ballet, religious or symphonic concerts) plus 10% with a minimum of 3 hours for each engagement.
- (b) The minimum rate of pay for all casual employees (as defined in Clause 7 - Definitions) shall be \$17.29 per hour (or \$16.76 per hour for employees engaged to perform in grand opera, ballet, religious or symphonic concerts) plus 20% with a minimum of 3 hours for each engagement.
- (c) In addition to the minimum rate prescribed in paragraph (b) of this subclause, a casual employee employed in musical services (as defined in Clause 7 - Definitions) shall be paid an amount of 5% of the minimum hourly rate so long as he/she is employed.

C. DIVISORS TO BE USED FOR STATE WAGE CASE FLAT WEEKLY INCREASES

- (a) Except as provided in paragraph (b) hereof, the hourly rates mentioned in subclauses A and B of this clause shall be increased by the amount produced by dividing the flat weekly increase by 18 and rounding to the nearest cent.

The 18 divisor is used on the basis of 6 calls of 3 hours duration per week (as defined for 'Weekly Employee' in Clause 7 - Definitions).

- (b) The hourly rates mentioned in subclauses A and B of this clause for employees who are engaged to perform in grand opera, ballet, religious or symphonic concerts, shall be increased by the amount produced by dividing the flat weekly increase by 21 and rounding to the nearest cent.

The 21 divisor is used on the basis of 7 calls of 3 hours duration per week (as defined for 'Weekly Employee' in Clause 7 - Definitions).

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D. SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

(b) For the purposes of this section:

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

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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

(e) Lodgment of assessment instrument

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

(f) Review of assessment

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

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(g) Other terms and conditions of employment

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

(h) Workplace adjustment

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

(i) Trial Period

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

9. ABSENCE FROM DUTY

- (a) Any weekly or regular weekly part-time employee absent from duty shall lose pay proportionate to the time of such absence unless such employee produces or forwards to the employer within 24 hours of the commencement of such absence, evidence satisfactory to the employer that the absence was reasonable because of either:
 - (i) any illness of the employee due neither to his/her own fault nor to accident arising otherwise than out of and in the course of employment;

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- (ii) any bodily injury to the employee caused by accident arising out of and in the course of employment.
- (b) If any dispute shall arise as to the deduction of pay on the grounds that satisfactory evidence has not been produced or forwarded the matter shall be referred to the Tasmanian Industrial Commission.
- (c) The provisions of this clause shall not affect any right of the employer to terminate the employment in accordance with this award.

10. ANNUAL LEAVE

- (a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave) in any one or more of the occupations to which this Division applies.

- (b) Annual Leave Exclusive of Public Holidays

Where any public holiday falls within such period of leave, then an additional day shall be added to the period of leave.

- (c) Proportionate Leave on Termination of Service

If after one month's continuous service in any qualifying twelve-monthly period an employee lawfully leaves his/her employment, or his/her employment is terminated by the employer through no fault of the employee the employee shall be paid at his/her ordinary rate of wage as follows:

Thirteen and 1/3 hours for each completed month of continuous service. This is in respect of any period for which leave has not been granted in accordance with this Clause.

- (d) Payment for Period of Leave

All employees, before going on annual 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 during the relevant period. In addition thereto, all employees, other than casual or part-time employees, shall be paid an amount equivalent to the minimum wage as prescribed in awards of the Tasmanian Industrial Commission and as varied from time to time.

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11. AWARD MODERNISATION

- (a) As part of their work to modernise award provisions in the industry, the parties have agreed to establish a working party to conduct a complete review of the award.
- (b) The working party, consisting of representatives from the Musicians' Union of Australia and The Tasmanian Chamber of Commerce and Industry Limited, will finalise discussions on all matters raised by the employers and the union concerned with restructuring, clarifying and rationalising the award including all matters of custom and practice, training, classifications, terms of engagement, the establishment of appropriate minimum rates of pay, inefficient work/management practices and any other inefficiencies relating to the operation of the award.
- (c) In the process of achieving greater structural efficiency in the award, provisions relating to calls, overtime, penalty rates, breaks and travelling will be reviewed in the light of current industry standards.
- (d) The aim of the working party is to bring about more flexible working arrangements, an improved quality of working life and job satisfaction and enhanced skills and job opportunities.
- (e) Such discussions and changes arising from them, must be premised on the understanding that:
 - (i) The majority of employees genuinely agree to any change
 - (ii) No employee will lose income as a result of the change
 - (iii) The union is a party to any agreement on change
 - (iv) The union will not unreasonably oppose any agreement on change.
 - (v) Any agreement on change will be ratified by the Tasmanian Industrial Commission.
 - (vi) The Union will assist in the implementation of any change and attempt to ensure such change takes place in an orderly manner without creating false expectations or disputation.

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12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative, and such leave shall be without deduction of pay for a period not exceeding the number of ordinary hours worked by the employee in 3 working days, provided that no payment shall be made in respect of an employee's rostered days off.

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

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

13. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries and those establishments covered by Clause 2 - Scope, and to enhance the career opportunities and job security of employees in these industries and establishments.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

14. DURATION OF CALLS

- (a) Subject to the overtime provisions of this award the duration of a call shall not exceed 3 hours, and shall include all intervals and breaks as time worked.
- (b) A call shall be deemed to have started at the time notified by the employer to the employee as the starting time or if no such time be notified, to have started at the time advertised for starting the call, but in either case, if all the members of the orchestra are not present and ready to start at such time, the call shall be deemed to start only when the orchestra actually starts playing.

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15. OCCUPATIONAL SUPERANNUATION

- (a) Where a respondent to this award is the employer of an employee covered by the scope of this award then he shall, subject to this clause, make a superannuation contribution on behalf of the employee of an amount equivalent to three percent of the employee's ordinary salary, provided that this requirement shall not apply to employees performing within Australia who are normally resident outside Australia.
- (b) An employer covered by this clause, at the time of engagement, must establish whether the employee is a member of the applicable superannuation scheme, and if the employee is not a member and/or shows no proof of such membership, an application form must be offered by the employer to the employee at that time. That employee shall be required to complete fully the necessary application form to become a member of the fund in order to be entitled to the contributions prescribed in subclause (a) hereof.
- (c) Contributions under the provisions of this clause shall be made to the Joint Entertainment Superannuation Trust or Tasplan.

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.

- (d) In the case of weekly employees, superannuation contributions remain payable pursuant to this clause notwithstanding an employee being absent from work on approved sick leave, long service leave or other approved leave. Contributions also remain payable in respect of an absence due to a bona fide workers compensation claim.
- (e) For the purposes of this clause "ordinary salary" refers to:
 - (i) An employee's usual earnings, including any other penalties where such penalties are part of the employee's normal earnings, excluding overtime, travel, meals or wardrobe allowances and the like, or annual leave loading.
 - (ii) Where an employee is engaged other than on a weekly basis, the salary as negotiated for the engagement including the casual loading provided for under this award but excluding any allowances such as travel, meals or wardrobe allowances and the like.
 - (iii) In the event of an all-up salary being negotiated, the negotiated salary, excluding any component in lieu of travel, meals or wardrobe allowances and the like, or annual leave loading that may otherwise have been payable pursuant to this award.
- (f) For the purposes of this clause the Joint Entertainment Superannuation Trust shall mean the fund established by the Joint Entertainment Superannuation Trust Deed and Tasplan, which complies with the Australian Government's Operational Standards for Occupational Superannuation Funds.

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16. OVERTIME AND EXTRAORDINARY RATES

- (a) All time worked Monday to Saturday inclusive between 1.00 am and 7.00 am shall be paid for at double the appropriate rate.
- (b) Any part of a call exceeding 4 hours shall be paid at one and one half times the appropriate rate.
- (c) Overtime payments payable under this Clause shall be made in respect of each quarter hour.

17. 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.

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(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.

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(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

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

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

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

(h) Cancellation of Maternity Leave

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

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

(i) Special Maternity Leave and Sick Leave

(i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

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

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

(j) Maternity Leave and Other Leave Entitlements

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

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (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.

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- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising 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:

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- (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.

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(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.

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(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.
- (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.

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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.

(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;

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- (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.

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- (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.

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- (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.

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- (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.

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'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.

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(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.

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- (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

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(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.

18. PAYMENT OF WAGES

- (a) All money payable under this award to a weekly employee shall be paid not later than Thursday in each week in the employer's time.
- (b) Upon termination of a weekly employee's employment all moneys due shall be paid within 24 hours.
- (c) All moneys due under this award to a casual employee shall be paid on the completion of the work on which such employee is engaged and not less frequently than once a week.
- (d) Wages shall not be paid to any person other than the employee entitled to such wages or a person authorised by the employee in writing to collect wages on his/her behalf. Unless they are paid in accordance with this subclause, payment shall be deemed not to have been made to the employee.

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19. REFRESHMENTS

- (a) Where any engagement extends to 4 hours or more and meals are served to patrons on the premises or at the place where the engagement is being carried out, meals of the type served to such patrons shall be provided for the musicians free of charge or, in lieu thereof, the musician shall be entitled to the sum of \$4.90 for such performance in addition to his/her ordinary rate of pay.
- (b) When in addition to the ordinary evening call an employee takes part in an intermediate call commencing at between 4.30 pm and 6.30 pm the employer shall pay torch employee a meal allowance of \$4.90 for his/her evening meal, and shall also provide tea and coffee or the ingredients and facilities to make and serve same.

20. REST BREAKS

- (a) A musician employed in 'musical services' as defined in item (b) of the definition in Clause 7 - Definitions shall be entitled to a break or not less than 10 minutes in each call which extends to 2 hours without finishing.
- (b) A musician employed in a dance band shall be entitled to a break of not less than 15 minutes in each call.
- (c) For the purposes of the two preceding subclauses a 'break' shall mean and include a period in which an employee shall not be required to perform musical services and shall count as time worked.

21. RIGHT OF ENTRY OF UNION OFFICIALS

For the purpose of interviewing on legitimate union business persons performing on any musical instrument, not more than 2 duly accredited union representatives shall at the one time have the right to enter any premises wherein members of such union, or persons in the same calling as such members, are performing. While interviewing such performers, the union officials shall not unreasonably interfere with or delay any performer in carrying out his/her musical duties.

22. SETTING UP TIME

Where a drummer or electronic instrumentalist is required to move his/her equipment to and from his/her place of employment, he/she shall receive in addition to his/her normal rate an allowance equal to 15 minutes of work at the ordinary time rate of pay.

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23. SPECIAL ALLOWANCES

- (a) Player of one or more extra instruments; provided that a percussionist shall receive such special allowance in respect of each of the following instruments only: xylophone, vibraphone, marimba and tympani; per additional instrument per call:
 - (i) if supplied by the musician - \$4.99
 - (ii) if supplied by the employer - \$2.93
- (b) Employee performing on stage: per call \$1.07.
- (c) Employee required to supply own music: weekly employee - \$6.60 per week; casual employee - \$2.23 per call.
- (d) Group/Band/Orchestra leader:
 - (i) where there are 2 musicians - appropriate rate plus 20%;
 - (ii) where there are 3 or more musicians - appropriate rate plus 33.1/3%.
- (e) Leader (other than in paragraph (f) hereof): appropriate rate plus 20%.
- (f) Leader employed in grand opera, grand ballet, concerts or religious performance: appropriate rate plus 30%.
- (g) Principal: appropriate rate plus 12 1/2 %.
- (h) Supply and upkeep of harp: weekly employee - appropriate rate plus \$20.20 per week; casual employee - appropriate rate plus \$3.08 per call.
- (i) Instrumentalist playing alone: appropriate rate plus 17 1/2 %.
- (j) Vocalist: appropriate rate plus \$3.42 per call.
- (k) Employee providing a public address system:
 - (i) P.A. of 0-100 watts output \$5.16;
 - (ii) P.A. of over 100 watts output \$10.33.

24. SPECIAL ARRANGEMENTS

Where the Federal Council or Federal Executive or a Branch Committee of the union agrees with an employer that for special reasons rates and/or conditions as prescribed herein should not apply, altered rates and/or conditions may be agreed upon between the parties. Such altered rates and/or conditions shall apply only to the specified establishment(s) for which application has been made.

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25. SPECIALTY ENTERTAINMENT

- (a) Employees playing in 'specialty entertainment' (as defined in Clause 7 - Definitions) shall be entitled to the appropriate rate plus 66 2/3 %.
- (b) Where an engagement customarily accepted as specialty entertainment is for more than six (6) days employees shall be entitled to the appropriate weekly rate plus 66 2/3 %.

26. SUNDAYS AND PUBLIC HOLIDAYS

- (a) Sundays

Except as otherwise provide in this award all work performed on Sundays shall be paid for at the following rates:

- (i) for weekly employees and regular weekly part-time employees - at double the appropriate rate payable for work performed on ordinary days with a minimum payment as for 3 hours.
- (ii) for casual employees - at double the appropriate rate payable for work performed on an ordinary day.

- (b) Public Holidays

All work performed on public holidays as set out hereunder shall be paid for at the following rates:

- (i) for weekly employees and regular weekly part-time employees - at double the appropriate rate payable for work performed on ordinary days.
- (ii) for casual employees - at double the appropriate rate payable for work performed on ordinary days.

- (c) For the purpose of subclause (b) hereof public holidays shall mean and include - New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (d) Where any of the days specified as holidays in subclauses (b) and (c) hereof fall on a Sunday and in consequence a holiday is generally observed on an ordinary weekday which would not otherwise be kept as a holiday, work done on such ordinary weekday shall be deemed to be done on one of the days to which subclause (c) hereof applies and shall be paid for accordingly.

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- (e) In the case of weekly employees or regular weekly part-time employees, if by reason of any of the aforesaid holidays being a holiday, no work is done thereon, the prescribed weekly wage shall nevertheless be paid.

27. SUPPORT ACTS

Notwithstanding the provisions contained elsewhere in this award as to rates of pay, and subject to the written consent of the union, the rate under this clause shall be \$50 per person and shall be reviewed annually where:

- (a) The musician is billed as support entertainment to a major act.
- (b) The contracted playing time does not exceed one forty five minute call (total attendance time not to exceed 1 1/4 hours).
- (c) All lights, public address system, etc. are provided and set up for the musician(s) call at no charge.
- (d) The major act does not qualify as Specialty Entertainment as defined in Clause 7 - Definitions, and rates as contained in Clause 24 - Special Arrangements.

28. TERMS OF ENGAGEMENT

- (a) A weekly employee shall be engaged and paid as for at least one week and where the employee so requires, the employer shall confirm the engagement in writing. The employment shall be terminated on either side by at least one week's written notice of termination or in the case of the conclusion of a season in a theatre by notice plainly posted on the call board.
- (b) The weekly wage prescribed by this award shall be paid to each weekly employee who is ready and willing to perform the work provided for by the award during any week, whether the employee is required to perform such work or not and this provision shall apply to all engagements whether for open air performances or otherwise.
- (c) Where an employee is engaged as a weekly employee for any fixed number of calls per week, the engagement shall not be altered to a weekly engagement for which a lesser sum is prescribed except on a week's notice to the employee.
- (d) Where the period of employment of a weekly employee includes in addition to one or more complete weeks a part of a week he/she shall be paid for each call included in the part of a week a pro rata amount of the prescribed weekly wage.
- (e) Where an employee is required by an employer to go on tour, such employee shall be deemed to be in the employment of the employer for at least from the time at which the employee begins to travel on the tour and to remain in such employment at least until he/she finishes travelling on the return from the tour.

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- (f) Where an employee is not expressly engaged as a weekly employee or as a regular weekly part-time employee such employee shall be deemed to be engaged as a casual employee.
- (g) At least 7 days notice shall be given of cancellation of a casual engagement either personally or to an address to be notified to the employer by the employee at the time of engagement failing which full payment shall be made.

Where the employee cancels an engagement within 7 days, the employee shall make a reasonable attempt to provide an employer with a substitute of acceptable and similar standard, and in the event of being unable to do so the employee shall notify the union.

PROVIDED that no cancellation shall be made where an engagement is entered into within 7 days of the event.

- (h) Nothing in this award shall affect any legal right to dismiss without notice an employee whether on tour or not, for malingering, inefficiency, neglect of duty, or misconduct and in the case of such dismissal, wages and other moneys or allowances due under this award shall be payable for the employment up to but not after the time of dismissal.
- (i) Notwithstanding anything elsewhere contained in this award, an employer may, in the case of any weekly employee, deduct payment of wages on any day on which an employee cannot be usefully employed because of:
 - (i) any strike; or
 - (ii) any breakdown of machinery; or
 - (iii) any stoppage of work unavoidable by the employer.

29. TRAVELLING AND TRANSPORTATION

- (a) (i) An employee when travelling on duty shall be provided by the employer with first class accommodation.
- (ii) (1) Except as otherwise prescribed in this paragraph, an employee who is required to travel on the employer's business and is unable to return home each night shall be paid an allowance of \$61.30 per day whilst travelling to or from a centre and for the first seven days residence at that centre. Thereafter the allowance at that centre shall be \$429.10 per week or a pro rata daily rate for a period of less than a week.
- (2) When employees are on tour as members of an orchestra, the following provisions shall apply in lieu of paragraph (i) hereof:

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- (A) the employer shall have the option of providing and paying for full board and lodging for the employee;
 - (B) as an alternative, the employer shall have the option of providing and paying for lodging for the employee, in which case the employee shall be paid \$9.97 per day as an allowance for meals;
 - (C) as a further alternative, the employer shall have the option of providing and paying for lodging and breakfast ('bed and breakfast') for the employee, in which case the employee shall be paid \$9.97 per day as an allowance for meals;
 - (D) where the employer provides lodgings or lodging and board, as the case may be, it shall be suitable to the reasonable requirements of the employee and as approved by the Secretary of the union;
 - (E) where an employer offers to provide board and lodging and instead the employee elects to make his/her own arrangements, the employee shall be paid an allowance of \$298.80 per week or a pro rata daily rate for a period of less than a week in lieu of the provisions of subparagraph (2)(A), (B) and (C);
 - (F) each employee on tour shall be paid an amount of \$10.00 per week to cover incidental expenses in addition to the allowances specified in this subparagraph.
- (iii) Where an employer engaged beforehand with an employee to be employed throughout a continuous period of at least 13 weeks in one city or town only and not with a view to the employee working on tour either there or elsewhere, the employee shall be entitled to the allowance under subclause (a)(ii) hereof for only 3 weeks in respect of his/her stay after arriving in the said city or town.
 - (iv) The employer shall transport or pay the reasonable costs of transporting the double bass or drums or other bulky instruments when they are to be used for the purpose of the employment.
 - (v) Where a suggestion is made by or for an employer or proposed employer to a person that the latter will be employed by the former in a certain place, if such employee presents there and such person does so present and is employed there, such employee shall receive from the employer all provisions, allowances and payments which would be due under this clause to an employee who is situated in the place where such person is when the suggestion is made, and who is definitely engaged by the employer to go from that place and to work in the place where such person so presents and is employed.

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- (vi) Where a casual employee is engaged and the ordinary fare for return transit from the post office of the city or town where such employee is engaged to the place of employment is more than 23 cents, the employer shall pay the reasonable cost of such return transit.
- (vii) If an employee is required by his/her employer to travel on a Sunday such employee shall, unless paid in pursuance of the provisions of this award for working on the said Sunday, be paid \$10.00 in addition to the allowance elsewhere prescribed by this award.
- (b) If any employee is detained at the place of employment by the employer or his/her representative after 11.30 pm and if so detained until too late to travel by the last train or vehicle to his/her home, the employer shall provide proper conveyance for the employee so detained, if a female, to her home, or if a male, to his home if such home is more than 1.6 kilometres from the place of employment.
- (c) Where an employee agrees to the request of the employer to use his/her own motor vehicle or motor cycle, the employee shall be paid an allowance of nineteen cents per kilometre.

30. TIME AND WAGES RECORDS

The employer shall keep records which contain the following information:

- (a) the name of every person employed by him/her;
- (b) the age of each such person who has not attained the age of 21 years;
- (c) the class of work that each such person performs;
- (d) the remuneration paid to such person;
- (e) the number of hours work done by each such person including the starting and finishing time;
- (f) the annual leave and sick leave credited and granted to each such person;
- (g) any other matter of which a record is required to be kept by this award.

31. UNIFORMS

Where an employee is required to wear special uniform other than evening dress, such uniform shall be supplied by the employer and shall be clean and in good order, and the cost of renovation and similar costs shall be paid by the employer.

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32. LEAVE RESERVED

Leave is reserved to the Musicians' Union of Australia, Hobart Branch:

- (a) to seek the insertion of classifications which fall within the scope of this award relating to broadcasts, telecasts and recordings, and
- (b) minimum rates adjustment following the completion of a Tasmanian Sales Survey.
- (c) Leave is reserved to the Tasmanian Chamber of Commerce and Industry Limited to seek variation of Clause 8 - Wage Rates in relation to the divisor to be used where flat weekly increases are awarded in State Wage Case decisions.

Tim Abey
COMMISSIONER

15 November 2004