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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**

**PROFESSIONAL ENGINEERS AND SCIENTISTS (PRIVATE INDUSTRY) AWARD**

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

CLAUSE 2, 4 AND 6 OF PART I AND CLAUSE 2, 7 AND 8 OF PART III ARE VARIED AND THE AWARD IS CONSOLIDATED

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

### **1. TITLE**

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

### **2. INDEX**

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## **3. SCOPE**

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

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

Hospitals

Metal and Engineering Industry

Medical Diagnostic Services (Private sector)

Medical Practitioners

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

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

**'Professional information technology duties'** shall mean duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires a person to:

- (a) hold a University Degree with an Information Technology Major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) have sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society

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

#### **ACADEMIC SCHEDULE**

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

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

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

#### **5. AWARD INTEREST**

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

The Association of Professional Engineers, Scientists and Managers, Australia;

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

the Tasmanian Chamber of Commerce and Industry Limited;

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

the Tasmanian Trades and Labor Council.

#### **6. SUPERSESSION**

This award incorporates and supersedes the Professional Engineers & Scientists (Private Industry) Award No. 3 of 2003 (Consolidated), No. 4 of 2003 and No. 5 of 2003.

**PROVIDED** that no right, obligation or liability incurred or accrued under the abovementioned awards will be affected by the replacement or supersession.

#### **7. GENERAL DEFINITIONS**

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

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

**'Professional Information Technology Employee'** shall mean an adult person qualified to carry out professional information technology duties as above defined. The term 'Professional Information Technology Employee' shall embrace and include 'Graduate Information Technology Employee' and 'Experienced Information Technology Employee' as hereinafter defined.

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

### **1. DEFINITIONS**

**'Casual employee'** shall mean an employee engaged by the hour on an irregular basis to meet short-term labour needs.

**'Continuing employment'** means the employment of a person where no fixed ending date for employment was determined at the time of engagement.

**'Fixed-term employment'** means the employment of a person where an ending date for employment is agreed at engagement and where the need to employ arises in the following circumstances:

- to provide specialised skills and competencies not normally needed in the workplace
- to provide additional support for a project or other work of limited duration;
- to replace an employee temporarily absent from the workplace through long service leave, long term illness or injury, parental leave, study leave or other similar absence.

**'Full-time employee'** shall mean an employee who is engaged to work the ordinary hours prescribed in Part V - HOURS OF WORK AND OVERTIME, - Clause 1 – Hours of Work, of this award on a continuing employment basis.

**'Part-time employee'** shall mean an employee who is engaged to work less than the ordinary hours prescribed in Part V - HOURS OF WORK AND OVERTIME, Clause 1 – Hours of Work, of this award on a continuing employment basis.

### **2. EMPLOYMENT CATEGORIES**

#### (a) General

An employee shall be engaged as a full-time, casual, part-time or fixed-term employee.

#### (b) Casual

- (i) A casual employee (as defined) for working ordinary hours shall be paid per hour one thirty-eighth of the appropriate weekly wage rate set out in Part III – SALARIES AND RELATED MATTERS, Clause 2 - Salary Rates. In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and holidays with pay.
- (ii) A casual employee shall be entitled to a minimum of three hours pay in respect of each engagement, unless varied by agreement between the employer and employee prior to the employee commencing employment.

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(c) Part-time

- (i) A part-time employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

(d) Fixed-term

- (i) A fixed-term employee may be engaged to work less hours each week than the ordinary hours prescribed in Part V - HOURS OF WORK AND OVERTIME, Clause 1 - Hours of Work.
- (ii) A fixed-term employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

### **3. TERMINATION OF EMPLOYMENT**

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

**PROVIDED** that:

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

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### **PART III - SALARIES AND RELATED MATTERS**

#### **1. DEFINITIONS**

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

**'Qualified Scientist'** shall mean a 'professional scientist' other than an 'experienced scientist' as hereinafter defined, that is, it shall mean a person possessing academic qualifications as specified in Academic Schedule, Part 1 – APPLICATION AND OPERATION OF THE AWARD, Clause 3 - Scope.

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

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

**'Graduate Scientist'** shall mean a qualified scientist who has completed the requirements for the award of a university or institute of technology degree (three, four or five year course) qualifying a person in accordance with the Academic Schedule, Part 1 – APPLICATION AND OPERATION OF THE AWARD , Clause 3 - Scope.

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

The aforesaid qualifications are as follows:

- (a) that he or she is a Member of the said Institution; or
- (b) that he or she, having graduated in a four year or a five year course at a University recognised by The Institution of Engineers, Australia, has had five years' experience on professional engineering duties since becoming a 'qualified engineer'; or



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(c) that he or she, not having so graduated, has had six years of such experience.

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

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

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

**'Graduate Information Technology Employee'** shall mean a person who:

- (a) holds a University Degree with an Information Technology Major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be eligible for admission as a Member of the Australian Computer Society.

**'Experienced Information Technology Employee'** shall mean a Professional Information Technology Employee with the undermentioned qualifications in any particular employment the adequate discharge of any portion of the duties of which employment requires:

- (a) that he/she having graduated with a University Degree with an Information Technology Major (three, four or five year course) accredited by the Australian Computer Society at professional level, has had four years' experience on professional information technology duties since graduating; or
- (b) that he/she, not having so graduated, has sufficient qualifications and experience to be eligible for admission as a Member of the Australian Computer Society plus a further four years' experience on professional information technology duties.

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## **2. SALARY RATES**

The minimum annual salaries payable to employees defined in Clause 3 – SALARIES AND RELATED MATTERS– Classification Descriptors shall be as set out below:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Annual Salary \$
Level 1 – Graduate Scientist	125	27118	7384	34502
Level 1 – Graduate Information Technology Employee (3 year course)	125	27118	7384	34502
Level 1 – Graduate Engineer	130	28203	7384	35587
Level 1 – Graduate Information Technology Employee (4 or 5 year course)	130	28203	7384	35587
Level 2 – Experienced Engineer	160	34711	7176	41887
Level 2 – Experienced Scientist	160	34711	7176	41887
Level 2 – Experienced Information Technology Employee	160	34711	7176	41887
Level 3 – Professional Engineer	180	39050	7176	46226
Level 3 – Professional Scientist	180	39050	7176	46226
Level 3 – Professional Information Technology Employee	180	39050	7176	46226
Level 4 – Professional Engineer	210	45558	7176	52734
Level 4 – Professional Scientist	210	45558	7176	52734
Level 4 – Professional Information Technology Employee	210	45558	7176	52734

**PROVIDED** that:

- (a) the rate shown above for a Graduate Engineer or Graduate Scientist or Graduate Information Technology Employee is the rate that applies when he or she first commences in the work-force;
- (b) the competence and salary of a Graduate Engineer or Graduate Scientist or Graduate Information Technology Employee will be reviewed at least annually;
- (c) in instances where the review confirms that the competence and skill of a Graduate Engineer or Graduate Scientist or Graduate Information Technology Employee has increased, his/her salary shall be increased by an amount of not less than 5% of the pre-existing salary.

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### **3. CLASSIFICATION DESCRIPTORS**

#### **Level 1 - Graduate Engineer**

#### **Level 1 – Graduate Scientist**

#### **Level 1 – Graduate Information Technology Employee**

An employee at this level undertakes initial professional tasks of limited scope and complexity, such as minor phases of broader assignments, in office, plant, field or laboratory work.

Under supervision from higher level Professional Engineers or Professional Scientists or Professional Information Technology Employees as to method of approach and requirements, the employee performs normal professional work and exercises individual judgement and initiative in the application of principles, techniques and methods.

In assisting more senior Professional Engineers or Professional Scientists or Professional Information Technology Employees by carrying out tasks requiring accuracy and adherence to prescribed methods of professional engineering or professional scientific or professional information technology analysis, design or computation, the employee draws upon advanced techniques and methods learned during and after the undergraduate course.

Training, development and experience using a variety of standard procedures enable the employee to develop increasing professional judgement and apply it progressively to more difficult tasks at Level 2.

Decisions are related to tasks performed, relying upon precedent or defined procedures for guidance. Recommendations are related to solution of problems in connection to the tasks performed.

Work is reviewed by higher level Professional Engineers or Professional Scientists or Professional Information Technology Employees for validity, adequacy, methods and procedures. With professional development and experience, work receives less review, and the employee progressively exercises more individual judgement until the level of competence at Level 2 is achieved.

The employee may assign and check work of technical staff assigned to work on a common project.

#### **Level 2 - Experienced Engineer**

#### **Level 2 – Experienced Scientist**

#### **Level 2 – Experienced Information Technology Employee**

Following development, the Experienced Engineer (as defined) or Experienced Scientist (as defined) or Experienced Information Technology Employee (as defined) plans and conducts professional work without detailed supervision but with guidance on unusual features and is usually engaged on more responsible assignments requiring substantial professional experience.

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**Level 3 - Professional Engineer**

**Level 3 – Professional Scientist**

**Level 3 – Professional Information Technology Employee**

An employee at this level performs duties requiring the application of mature professional knowledge. With scope for individual accomplishment and co-ordination of more difficult assignments, he/she deals with problems for which it is necessary to modify established guides and devise new approaches.

The employee may make some original contribution or apply new professional approaches and techniques to the design or development of equipment or products.

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

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

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

**Level 4 - Professional Engineer**

**Level 4 – Professional Scientist**

**Level 4 – Professional Information Technology Employee**

An employee at this level performs professional work involving considerable independence in approach, demanding a considerable degree of originality, ingenuity and judgement, and knowledge of more than one field of, or expertise (for example, acts as his/her organisation's technical reference authority) in a particular field of professional engineering or professional science or professional information technology.

An employee at this level:

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

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

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

The employee supervises a group or groups including Professional Engineers or Professional Scientists or Professional Information Technology Employees and other staff, or exercises authority and technical control over a group of professional staff. In both instances, he/she is engaged in complex professional engineering or professional science or professional information technology applications.

#### **4. DISCLOSURE OF QUALIFICATIONS**

- (a) An employee who is employed under this award or who is an applicant for employment covered by this award, shall if and when required so to do by the employer produce to the employer written evidence that he/she possesses or has acquired the qualifications of either a Qualified Engineer or Experienced Engineer (as the case may be) or Qualified Scientist or Experienced Scientist (as the case may be) or Graduate Information Technology Employee or Experienced Information Technology Employee (as the case may be).
- (b) Where an employee has failed to produce to the employer written evidence that he/she possesses or has acquired the relevant qualifications and the employee subsequently claims to be entitled to payment at a rate prescribed by this award, it shall be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee had acquired the qualifications of Qualified Engineer or Experienced Engineer (as the case may be) or Qualified Scientist or Experienced Scientist (as the case may be) or Graduate Information Technology Employee or Experienced Information Technology Employee (as the case may be).

#### **5. NOTIFICATION OF SALARY AND CLASSIFICATION**

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

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## **6. SUPERANNUATION**

### (a) Contribution

As from 14 October 1989, an employer shall make a contribution equivalent to 3% of ordinary time earnings into an approved superannuation fund in respect of all employees who are paid under this award. Such earnings shall exclude overtime and payments made by virtue of Part IV - ALLOWANCES, Clause 1 - Fares, Travelling Expenses and Travelling Time of this award.

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

### (b) Definitions

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

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

### (c) Fund

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

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

(ii) If the association is concerned about a fund selected pursuant to subclause (e) it may, within six months of the date of operation of this clause or the date of fund selection (whichever is the latter), challenge before the Tasmanian Industrial Commission the suitability of the fund.

### (d) Fund Membership

(i) Employers shall make employees aware of their entitlements under this clause and offer them the opportunity to join an appropriate fund in accordance with subclause (c).

(ii) In the event the employee elects not to join the fund, the employer shall remind the employee, in writing, of his or her entitlements, within a period of a further six months. Should an employee subsequently complete the necessary forms and become a member of the fund, the contributions prescribed in subclause (a) hereof shall commence from the pay period commencing after the completion of such forms.

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(e) Exemptions

(i) In lieu of the contributions specified in subclause (a) hereof, the benefits offered to employees by an existing approved superannuation fund may be improved, subject to the rules of the fund, such that the overall costs of such benefits is not less than the equivalent of a 3% contribution by the employer. Such improvements shall be in place by the date in subclause (a) hereof and contain the following provisions:

- (1) an employer contribution of at least 3%;
- (2) no requirement for an associated employee contribution.

Any such improvements made on or from 1 January 1987 may be taken into account.

(ii) Leave is reserved to any employer to apply for exemption from this award on the grounds of the standard of existing superannuation arrangements provided by the employer as at 14 October 1989 or the employer's financial capacity to pay.

(iii) For the purpose of this clause, the following company is exempt from contributing to the funds nominated in subparagraph (i) of paragraph (c) Fund, and contributions shall be made in accordance with paragraph (a) Contribution, into the fund set out below:

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

(f) Absence from Work

(i) Paid Leave

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

(ii) Unpaid Leave

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

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

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## **7. MINIMUM WAGE**

### (a) Minimum Wage

No employee shall be paid less than the minimum wage.

### (b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by the Supported Wage System is \$467.40 per week.

(ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).

(iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

### (c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

(ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

### (d) Application of Minimum Wage to Certain Employees

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

### (e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(i) applies to all work in ordinary hours;

(ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and



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- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T11548 of 2004) and all previous safety net and state wage case adjustments.

## **8. 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 Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this section:

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

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

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

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

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(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:

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.

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(f) Review of Assessment

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

(g) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this 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 four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with 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.

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## **PART IV - ALLOWANCES**

### **1. FARES, TRAVELLING EXPENSES AND TRAVELLING TIME**

An employee shall be reimbursed all reasonable expenses incurred while travelling on his or her employer's business, including where appropriate excess travelling time not provided for by Part V – HOURS OF WORK AND OVERTIME, Clause 2 – Overtime.

### **2. VEHICLE ALLOWANCE**

In cases where it is mutually agreed that an employee will be required to use his or her private vehicle on his or her employer's business, an employee shall be paid reasonable compensation, but in no case shall he or she receive payment at a rate less than the equivalent of 50.5 cents per kilometre so travelled.

**PROVIDED** that this rate shall be adjusted on 1 June each year in accordance with movement in the 'Transportation' component of the Consumer Price Index for the 12 months preceding the March Quarter in the same year.

## **PART V - HOURS OF WORK AND OVERTIME**

### **1. HOURS OF WORK**

- (a) Subject to the exceptions, hereinafter provided, the ordinary hours of work shall be an average of 38 hours per week to be worked on one of the following bases:
  - (i) 38 hours within a work cycle not exceeding 7 consecutive days, or
  - (ii) 76 hours within a work cycle not exceeding 14 consecutive days, or
  - (iii) 114 hours within a work cycle not exceeding 21 consecutive days, or
  - (iv) 152 hours within a work cycle not exceeding 28 consecutive days.
  - (v) For the purposes of this clause any other work cycle during which a weekly average of 38 ordinary hours are worked as may be agreed by the parties.
- (b) The ordinary hours of work prescribed herein may be worked on any day or all the days of the week, Monday to Friday.
- (c) The ordinary hours of work prescribed herein shall be continuous, except for meal breaks, at the discretion of the employer between the hours of 6.00 am and 6.00 pm.
- (d) The ordinary hours of work shall not exceed ten in one day.

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- (e) In each establishment an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

However in the event of an employer and the majority of employees of the business being unable to reach an agreement on the method of implementation the resolution of the matter shall be dealt with in accordance with Part VII – CONSULTATION AND DISPUTE RESOLUTION, Clause 2 - Disputes and Grievance Procedure of this Award.

## **2. OVERTIME**

- (a) For all work done outside ordinary hours the rates of pay shall be time and a half for the first 3 hours and double time thereafter, such double time to continue until the completion of the overtime work.
- (b) Time Off In Lieu of Payment

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

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked (unless otherwise provided elsewhere in the award).
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in sub-clause (b)(i) of this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book.

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(c) Make Up Time

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

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hour provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
- (v) An employer shall record make up time arrangements in the time and wages book.

(d) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.

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- (v) Once a decision has been taken to introduce an enterprise system of Rostered Day Off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record Rostered Day Off arrangements in the time and wages book.

### **3. REQUIREMENT TO WORK REASONABLE OVERTIME**

- (a) Subject to subclause (b) an employer may require an employee to work reasonable overtime at overtime rates or with time off in lieu in accordance with Part V - HOURS OF WORK AND OVERTIME, Clause 2, sub-clause (b).
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
  - (i) any risk to employee health and safety;
  - (ii) the employee's personal circumstances including any family responsibilities;
  - (iii) the needs of the workplace or enterprise;
  - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (v) any other relevant matter.

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

### **1. ANNUAL LEAVE**

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

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

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

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- (b) For the purpose of this clause, in the expression 'normal rate of remuneration':
- (i) '**normal rate**' shall mean the rate payable to the employee immediately prior to proceeding on leave or the average rate payable to the employee over the three months immediately prior to proceeding on leave, whichever is the greater, and
  - (ii) '**remuneration**' shall mean the salary prescribed by this award under Part III - SALARIES AND RELATED MATTERS, Clause 2 - Salary Rates, together with all extraneous payments prescribed by this award.

**PROVIDED** that monies paid pursuant to Part V - HOURS OF WORK AND OVERTIME, Clause 2 - Overtime, and Part IV - ALLOWANCES, Clause 1 - Fares, Travelling Expenses and Travelling Time, of this award, in respect of overtime worked and fares and travelling allowance shall not be taken into account for the purpose of this clause.

## **2. ANNUAL LEAVE LOADING**

In respect of annual leave an employee shall be paid a loading calculated at the rate of 17.5% of his or her entitlement under Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 1 - Annual Leave of this award.

**PROVIDED** that:

- (a) in no case where the loading is calculated on the basis of 17.5 per cent of the normal rate shall it exceed the loading which would be payable in respect of an employee classified in accordance with Part III - SALARIES AND RELATED MATTERS, Clause 2 - Salary Rates, Level 4 - Professional Engineer.
- (b) no loading shall be payable under this clause on termination of employment.
- (c) employees and their employers may mutually agree on an arrangement other than the loading provided in this clause - such arrangements to stand in place of the loading. In no case shall the arrangement made under this provision give a value of less than the value of the loading.

## **3. BEREAVEMENT LEAVE**

An employee shall on the death of a member of the employee's immediate family, or a member of the employee's household 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.

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.



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**PROVIDED ALWAYS** 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.

The term 'immediate family' includes:

- A. spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- B. child or an adult child [including an adopted child, a step child, a foster child or an ex nuptial child], parent [including foster parent, step parent and legal guardian], grandparent, grandchild or sibling of the employee or spouse of the employee.

#### **4. CARER'S LEAVE**

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 7 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement per annum.

Where a part-time employee's hours of work are not constant, the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
  - (1) a member of the employee's immediate family, or
  - (2) a member of the employee's household.

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The term **'immediate family'** includes

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
  - (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- (b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

(c) Grievance Process

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

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

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## **5. HOLIDAYS WITH PAY**

- (a) An employee shall be entitled to holidays with pay as follows: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day - or such other days as are generally observed in a locality as a substitute for any of the said days respectively.

**PROVIDED** that if the majority of employees in the particular establishment is entitled to a holiday on any day or days other than the days specified herein, an employee subject to this Award shall be also entitled to a holiday on such day or days.

- (b) All work performed on a public holiday shall be deemed to be work in excess or outside of normal hours of duty and shall be paid or compensated for in accordance with Part V - HOURS OF WORK AND OVERTIME, Clause 2 - Overtime of the award.

## **6. PARENTAL LEAVE**

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

- (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
- (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or
  - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.

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- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

(b) Entitlement

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

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
  - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
  - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.

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- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special maternity leave
  - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
  - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
  - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.
- (vii) Transfer to a safe job
  - (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

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- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:

- (i) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
- (ii) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (iii) a statutory declaration stating:
  - (1) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (2) particulars of any period of maternity leave sought or taken by the mother, and
  - (3) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (iv) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and

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- (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
  - (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
  - (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
  - (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.
- (f) Parental leave and other entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

(1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.

(2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.

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

(v) Transitional Arrangements - Sick Leave

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

(vi) Part-time Work Agreement

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

(A) that the employee may work part-time;

(B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(C) upon the classification applying to the work to be performed; and



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(D) upon the period of part-time employment.

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

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

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

(vii) Termination of Employment

(1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

(2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

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

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

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause:

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii), the employee will be entitled to return to the position they held immediately before such transfer.

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- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

(j) Redundancy

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

## **7. SICK LEAVE**

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

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

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

### **1. ENTERPRISE AGREEMENTS**

- (a) Notwithstanding anything contained in this award but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
  - (i) The majority of employees affected by the change must genuinely agree to the change.

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- (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The relevant union shall be advised by the employer of their intention to commence discussions with employees on an agreement under this clause.
  - (iv) The relevant union must be a party to the agreement.
  - (v) The relevant union or unions shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:
- (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect of the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

## **2. DISPUTES AND GRIEVANCE PROCEDURE**

Any employee grievance shall be dealt with in the following manner:

- (a) in the first instance, the employee shall attempt to resolve the grievance with his or her immediate supervisor or the employer;
- (b) where such an attempt at settlement has failed, or where the grievance is of such a nature that direct discussion with the immediate supervisor would be inappropriate, the employee may notify an authorised representative;
- (c) the authorised representative may take the matter up with the employer and a meeting shall be arranged to take place as soon as practical after notification to the employer of the grievance;
- (d) if the matter in dispute is not settled at the preceding stage, it may be referred by either party to the Tasmanian Industrial Commission for settlement.

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### **3. STRUCTURAL EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of enterprises and to enhance the career opportunities and job security of employees subject to the award.
- (b) Consistent with the objectives of subclause (a) herein, employers, employees and the association shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.

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

- (c) An employer may direct an employee to carry out such duties as are within the limits of an employee's skills, competence and training consistent with the classification structure of the award.

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

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

### **1. EQUIPMENT AND SPECIAL CLOTHING**

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

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

### **2. PROFESSIONAL DEVELOPMENT**

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

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

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

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

### **1. PROFESSIONAL EMPLOYEES' REPRESENTATIVE**

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

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

P C Shelley  
**DEPUTY PRESIDENT**

20 August 2004