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**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984  
s23 application for an award or variation of an award

**Tasmanian Trades and Labor Council**  
(T5985 of 1995)

**Australian Municipal, Administrative, Clerical and Services Union**  
(T6107 of 1996)

**FUEL MERCHANTS AWARD**

FULL BENCH:

PRESIDENT F D WESTWOOD  
DEPUTY PRESIDENT A ROBINSON  
COMMISSIONER P A IMLACH

Award variation - nominated private and public sector awards - "Supported Wage System" - application approved - orders to issue - operative from 23.2.96

Award variation - vary meal allowance by deleting existing amount and inserting \$9.25 - application approved - orders to issue operative from the ffpp on or after 22 March 1996

**ORDER BY CONSENT -**

**No. 1 of 1996  
(Consolidated)**

NEW CLAUSES ARE SUBSTITUTED FOR CLAUSE 8 AND CLAUSE 25 OF THIS AWARD AND THE AWARD IS CONSOLIDATED:

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## **1. TITLE**

This award shall be known as the "Fuel Merchants Award".

## **2. SCOPE**

This award is established in respect of:

- (a) a seller of wood, coal or fuel oils; and
- (b) distributors of petroleum products.

## **3. ARRANGEMENT**

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

This award shall come into operation on and from 23 February 1996, with the exception of Clause 25 - Meal Times which will be operative from the first full pay period to commence on or after 22 March 1996.

It is a term of this award (arising from the decision of the Tasmanian Industrial Commission in the State Wage Case of 13 August 1991) that the unions undertake (until 30 November 1991) not to pursue any extra claims, award or overaward, except where consistent with those principles.

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

This award incorporates and supersedes No. 1 of 1992 (Consolidated), No. 1 of 1993, No. 1 of 1994 and No. 1 of 1995.

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

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## **6. PARTIES AND PERSONS BOUND**

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:-
  - (i) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
  - (ii) the National Union of Workers, Tasmanian Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope; and
  - (iii) the Transport Workers' Union, Tasmanian Branch, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
- (d) the following organisations of employers in respect of whom award interest has been determined:-
  - (i) the Australian Road Transport Industrial Organization and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope; and
  - (ii) the Tasmanian Confederation of Industries.

## **7. DEFINITIONS**

**'Articulated vehicle'** shall mean a vehicle with 3 or more axles, comprising a power unit (called "tractor truck", "prime mover", etc.,) and semi-trailer unit which is superimposed on the power unit and coupled together by means of a king pin revolving on a turntable and articulated whether automatically detachable or permanently coupled.

**'Assistant driver'** means any employee who regularly accompanies a driver to assist in the driving, loading and unloading of bulk vehicles and/or delivery, but shall not include an employee temporarily accompanying a driver to assist only in loading, unloading and/or delivery.

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**'Bituminous-products-sprayman'** shall mean an employee working under the direction of the driver of a bitumen-spraying vehicle; and, without limiting the scope of duties, the said duties shall include operation of the spraying equipment at the rear end of the vehicle, operation of the lance-type hand-spray, moving the vehicle during hand-spraying operations, and assisting the driver in the driving of the vehicle.

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

**'Dual steer vehicle'** means either a rigid vehicle which has more than one steering axle or an articulated vehicle with more than one steering axle on the prime mover.

**'Fork lift truck'** shall mean a power driven and operated vehicle constructed for driving and operation by an operator seated on the vehicle for the purpose of lifting, carrying and or stacking goods, merchandise, materials etc. (whether as units, in batches, etc., or in pallet loads) by means of fork arms or other appropriate fitments according to the nature of the load.

**'Lazy-axle'** rigid delivery vehicle means a vehicle of similar construction to a "tandem drive" rigid delivery vehicle with the difference that only one of the rear axles has a differential through which the driving power is transmitted, and excludes an articulated vehicle.

**'Maker's capacity'** shall mean the capacity attributed to the vehicle by the manufacturer as a maximum gross rating less the vehicle's tare except in cases where on any day the maximum weight of any load exceeds such capacity by one-third or more thereof, in which cases such maximum load shall, for the purposes of assessing the wages to be paid for that day, be deemed to be the maker's capacity.

**'Motor waggon driver'** means any employee engaged to drive or control any type of delivery vehicle specified in this part irrespective of other duties. This definition shall not exclude other duties ordinarily performed by a driver, including loading and unloading of bulk vehicles.

**'Part-time employee'** is one engaged to work in accordance with the provisions of Clause 31 - Part-Time Employees.

**'Saturday'** for the purpose of this award shall mean either Saturday or such other day as is at present observed as the weekly half- holiday in a particular industry or district.

**'Show Day'** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

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**'Storeman and Packer'** shall mean every employee engaged in the work of receiving, stacking, storing, packing, delivering or handling in any way whatsoever, petroleum products, equipment or other merchandise sold, used or employed in connection with petroleum merchant's business, including the painting and stencilling on drums and all work in connection with the packing or unpacking of containers or unitised cargoes.

**'Tandem-drive'** rigid delivery vehicle means a long-wheel-base single-unit vehicle (in which the engine, driving compartment and load-carrying compartment, tank or tray are all mounted on the one chassis) having 2 rear axles each with its own differential through which the driving power is transmitted to the rear wheels, and excludes an articulated vehicle.

**'Trainee Clerk'** means a person employed by the employer under the terms of the Australian Traineeship System and any agreements attached thereto.

**'Training Agreement'** shall mean an agreement registered under the provisions of the Industrial and Commercial Training Act 1985.

**'Union'** shall mean and refer to the Transport Workers' Union of Australia or the National Union of Workers or the Australian Municipal, Administrative, Clerical and Services Union.

**'Year'** shall mean the period between the first day of June in each year and the next ensuing 31st day of May.

**8. WAGE RATES**

GROUP I - SELLER OF WOOD AND/OR COAL

(a) The minimum weekly wage rate that shall be paid to adult employees classified hereunder shall be:

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
1. Bench hand and all others not elsewhere provided for	339.50	16.00	355.50
2. Employee driving motor vehicle having maker's capacity of -			
1.2 tonnes or less	355.20	16.00	371.20
Over 1.2 tonnes but under 3 tonnes	359.10	16.00	375.10
Over 3 tonnes but under 6 tonnes	364.00	16.00	380.00
Over 6 tonnes but under 7 tonnes	364.70	16.00	380.70
Over 7 tonnes but under 8 tonnes	365.60	16.00	381.60
Over 8 tonnes but under 9 tonnes	366.30	16.00	382.30
Over 9 tonnes but under 10 tonnes	367.20	16.00	383.20

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Further additional amounts -

3. Employee handling money -

For any amount handled up to \$20	\$0.50 per week extra
Over \$20 but not exceeding \$200	\$1.00 per week extra
Over \$200 but not exceeding \$600	\$2.20 per week extra
Over \$600 but not exceeding \$1,000	\$3.20 per week extra
Over \$1,000	\$4.10 per week extra

4. Leading Hand -

In charge of not less than 3 nor more than 10	\$14.90
In charge of not less than 10 nor more than 20	\$22.00
In charge of more than 20	\$28.40

**GROUP II - SELLER OF OIL FUELS AND THE  
DISTRIBUTOR OF PETROLEUM PRODUCTS**

(a) The minimum weekly wage rate that shall be paid to adult employees classified hereunder shall be as follows.

The undermentioned wage rates shall apply only when the employee is engaged on work within the terms of the purposes for which this award is established. Where the employee is engaged on work other than aforesaid the prescriptions contained in the appropriate award shall apply.

(A) - STOREMAN

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
1. Storeman and/or packer			
On commencement	437.70	16.00	453.70
6 months to 2 years	442.80	16.00	458.80
2 years to 3 years	447.60	16.00	463.60
3 years to 5 years	452.50	16.00	468.50
Over 5 years	457.50	16.00	473.50
2. Operators of power-driven forklift or similar mobile driven stacking machine or device			
On commencement	450.90	16.00	466.90
6 months to 2 years	456.20	16.00	472.20
2 years to 3 years	461.80	16.00	477.80
3 years to 5 years	467.20	16.00	483.20
Over 5 years	472.60	16.00	488.60

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3. Leading Hands

In Charge of 1 to 2 employees	\$7.30 per week extra
In Charge of a store	\$14.50 per week extra
In charge of 3 to 10 employees	\$14.50 per week extra
In charge of 11 to 20 employees	\$21.10 per week extra
In charge of more than 20 employees	\$27.90 per week extra

**Provided that** all persons employed under this section who work in excess of 35 hours per week shall be paid a loading on their hourly rate equal to 12 & 1/2 per cent of that hourly rate for each hour worked up to 40 hours per week.

(B) - DRIVERS

Weekly wage rate for adult service with the same employer in the same classifications

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
1. Employee driving a motor vehicle with a combined weight of vehicle and maximum load of –			
(i) Rigid Vehicle			
(A) On commencement:			
Under 10 tonnes	453.40	16.00	469.40
10 tonnes and under 13 tonnes	456.70	16.00	472.70
13 tonnes and under 19 tonnes	460.50	16.00	476.50
19 tonnes and under 25 tonnes	466.50	16.00	482.50
25 tonnes and under 31 tonnes	472.60	16.00	488.60
31 tonnes and under 37 tonnes	478.70	16.00	494.70
37 tonnes and under 43 tonnes	485.40	16.00	501.40
Thereafter for each additional 6 tonnes or part thereof	\$5.30 per week extra		
(B) 6 months to 2 years			
Under 10 tonnes	458.70	16.00	474.70
10 tonnes and under 13 tonnes	462.10	16.00	478.10
13 tonnes and under 19 tonnes	465.90	16.00	481.90
19 tonnes and under 25 tonnes	472.00	16.00	488.00
25 tonnes and under 31 tonnes	478.10	16.00	494.10
31 tonnes and under 37 tonnes	484.00	16.00	500.00
37 tonnes and under 43 tonnes	490.90	16.00	506.90



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Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(C) 2 years to 3 years

Under 10 tonnes	463.80	16.00	479.80
10 tonnes and under 13 tonnes	467.50	16.00	483.50
13 tonnes and under 19 tonnes	471.70	16.00	487.70
19 tonnes and under 25 tonnes	477.30	16.00	493.30
25 tonnes and under 31 tonnes	483.50	16.00	499.50
31 tonnes and under 37 tonnes	489.50	16.00	505.50
37 tonnes and under 43 tonnes	497.50	16.00	513.50

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(D) 3 years to 5 years

Under 10 tonnes	469.30	16.00	485.30
10 tonnes and under 13 tonnes	472.80	16.00	488.80
13 tonnes and under 19 tonnes	477.20	16.00	493.20
19 tonnes and under 25 tonnes	484.00	16.00	500.00
25 tonnes and under 31 tonnes	488.90	16.00	504.90
31 tonnes and under 37 tonnes	495.00	16.00	511.00
37 tonnes and under 43 tonnes	501.80	16.00	517.80

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(E) Over 5 years

Under 10 tonnes	475.10	16.00	491.10
10 tonnes and under 13 tonnes	478.50	16.00	494.50
13 tonnes and under 19 tonnes	482.80	16.00	498.80
19 tonnes and under 25 tonnes	488.20	16.00	504.20
25 tonnes and under 31 tonnes	494.70	16.00	510.70
31 tonnes and under 37 tonnes	500.90	16.00	516.90
37 tonnes and under 43 tonnes	507.20	16.00	523.20

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(ii) Articulated vehicle –

(A) On commencement:

Under 10 tonnes	461.80	16.00	477.80
10 tonnes and under 13 tonnes	465.50	16.00	481.50
13 tonnes and under 19 tonnes	469.20	16.00	485.20
19 tonnes and under 25 tonnes	475.40	16.00	491.40
25 tonnes and under 31 tonnes	481.50	16.00	497.50
31 tonnes and under 37 tonnes	490.30	16.00	506.30
37 tonnes and under 43 tonnes	493.70	16.00	509.70

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(B) 6 months to 2 years

Under 10 tonnes	467.30	16.00	483.30
10 tonnes and under 13 tonnes	470.90	16.00	486.90
13 tonnes and under 19 tonnes	474.50	16.00	490.50
19 tonnes and under 25 tonnes	480.70	16.00	496.70
25 tonnes and under 31 tonnes	487.00	16.00	503.00
31 tonnes and under 37 tonnes	492.90	16.00	508.90
37 tonnes and under 43 tonnes	499.10	16.00	515.10

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(C) 2 years to 3 years

Under 10 tonnes	472.10	16.00	488.10
10 tonnes and under 13 tonnes	475.10	16.00	491.10
13 tonnes and under 19 tonnes	480.60	16.00	496.60
19 tonnes and under 25 tonnes	486.40	16.00	502.40
25 tonnes and under 31 tonnes	492.30	16.00	508.30
31 tonnes and under 37 tonnes	498.40	16.00	514.40
37 tonnes and under 43 tonnes	504.80	16.00	520.80

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

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(D) 3 years to 5 years

Under 10 tonnes	478.10	16.00	494.10
10 tonnes and under 13 tonnes	482.20	16.00	498.20
13 tonnes and under 19 tonnes	485.50	16.00	501.50
19 tonnes and under 25 tonnes	491.90	16.00	507.90
25 tonnes and under 31 tonnes	497.80	16.00	513.80
31 tonnes and under 37 tonnes	502.80	16.00	518.80
37 tonnes and under 43 tonnes	510.30	16.00	526.30

Thereafter for each additional 6 tonnes or part thereof \$5.30 per week extra

(E) Over 5 years

Under 10 tonnes	483.60	16.00	499.30
10 tonnes and under 13 tonnes	487.60	16.00	503.60
13 tonnes and under 19 tonnes	491.10	16.00	507.10
19 tonnes and under 25 tonnes	497.10	16.00	513.10
25 tonnes and under 31 tonnes	503.10	16.00	519.10
31 tonnes and under 37 tonnes	509.50	16.00	525.50
37 tonnes and under 43 tonnes	515.60	16.00	531.60

2. Additional payments -

In addition to the rates prescribed above, the following additional payments shall apply to:-

	\$
(i) an employee driving a vehicle (not being a tractor) and drawing a trailer	1.50 per day
(ii) an employee driving a vehicle carrying hot liquid bitumen or hot tar	4.30 per week
(iii) an employee required to operate alone a delivery vehicle fitted with a reel and hose exceeding 19 metres in length and to deliver through such hose into customers' tanks of 900 litres or less capacity - for each day on which the employee is principally engaged on such work	1.40 per day

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This amount shall not be payable on any day on which the employee concerned delivers exclusively to service stations.

- |   |                |
|---|----------------|
| (iv) an employee driving a vehicle carrying bulk liquid petroleum gas   | 4.10 per week  |
| (v) an employee driving a bituminous products spraying vehicle and directing the work of a bituminous products sprayman | 5.10 per week  |
| (vi) an employee picking up used oil - for any day on which the employee is so employed                                 | 1.40 per day   |
| (vii) a leading hand, i.e. an employee who is in charge of:-  |                |
| (i) 3 to 10 employees   | 18.00 per week |
| (ii) 11 to 20 employees   | 26.60 per week |
| (iii) more than 20 employees  | 34.50 per week |

**PROVIDED** that all persons employed under this section who work in excess of 35 hours per week shall be paid loading on their hourly rate equal to 12 and 1/2 per cent of that hourly rate for each hour worked up to 40 hours per week.

### 3. Junior Drivers

- (i) The minimum weekly wage rate to be paid to junior employees is as follows:-
- Under 19 years of age - 70% of the total weekly wage rate payable to an adult for the class of work performed.
- 19 years and under 20 years of age - 80% of the total weekly wage rate payable to an adult for the class of work performed.
- (ii) No juniors under 18 shall be permitted to have sole charge of a motor vehicle.
- (iii) Juniors shall not be employed in a greater proportion than one junior to every 5 drivers receiving adult wages.

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(C) - CLERKS

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(i) Adult Clerks			
1st year of adult service	424.50	16.00	440.50
2nd year of adult service	437.70	16.00	453.70
3rd year of adult service	450.40	16.00	466.40
4th year of adult service	462.90	16.00	478.90
5th year of adult service	475.60	16.00	491.60
6th year of adult service	487.30	16.00	503.30
7th year of adult service	497.50	16.00	513.50
8th year of adult service	509.20	16.00	525.20
9th year of adult service	520.80	16.00	536.80
10th year of adult service	532.50	16.00	548.50
11th year of adult service	544.60	16.00	560.60
12th year of adult service	557.00	16.00	573.00

(ii) Adult Typists

1st year of adult service	424.50	16.00	440.50
2nd year of adult service	437.70	16.00	453.70
3rd year of adult service	450.40	16.00	466.40
4th year of adult service	462.90	16.00	478.90

(iii) Juniors

	Percentage of 1st Year Adult Weekly Wage Rate %
At or under 17 years of age	57
At 18 years of age	68
At 19 years of age	79
At 20 years of age	90

(iv) Trainee Clerk (as defined)

The minimum weekly wage rate payable to a trainee clerk (as defined) shall be determined by the following method of calculation:

By taking the appropriate wage rate for a junior clerk as described in Clause 8, Group II, subclause (C)(iii) of this award then multiplying it by 39 and dividing it by 52. (39 being the actual number of weeks on the job)

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**PROVIDED THAT** the wage determined by this calculation shall in no case be less than the minimum rate (as varied from time to time) prescribed by the Australian Traineeships System Guidelines.

**PROVIDED ALWAYS** that trainee clerk (as defined) wage rate shall be calculated in multiples of ten (10) cents with any result of five (5) cents or more being taken to the next ten (10) cents.

**PROVIDED FURTHER** all persons employed under this section who work in excess of 35 hours per week shall be paid a loading on their hourly rate equal of 12 and 1/2 per cent of that hourly rate for each hour worked up to 40 hours per week.

#### GROUP III - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

Subject to this clause an employer may engage employees at a supported wage rate (as set out in subclause (c) of this clause) 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 subclause 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 subclause 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 subclause:

- (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.

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- (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 subclause 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 (paragraph (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 \$45 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 subclause, 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.

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(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.

(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 subclause 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 subclause 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 subclause 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 paragraphs (d) and (e).

(iii) The minimum amount payable to the employee during the trial period shall be no less than \$45 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.



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- (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. ANNUAL LEAVE**

### (a) Period of Leave

A period of 28 consecutive days' leave shall be allowed to an employee, other than a casual employee after 12 months' continuous service (less the period of annual leave).

### (b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in any combination provided one period shall not be less than seven (7) consecutive days, i.e. five (5) working days.

### (c) Annual Leave Exclusive of Public Holidays

- (i) Such period of annual leave shall not include award holidays observed on working days but shall include all other non-working days.
- (ii) If any award holiday falls within an employee's period of annual leave and is observed on the day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day for each such holiday observed as aforesaid.
- (iii) Where an employee without reasonable excuse, proof whereof shall lie upon the employee, is absent from employment on the working day or part of the working day prior to the commencement of annual leave, or fails to resume work at the ordinary starting time of the working day immediately following the last day of the period of annual leave, the employee shall not be entitled to payment for the public holidays which fall within the period of annual leave.

### (d) Notice of Leave to be given

At least 7 days' notice shall be given to an employee as to when leave is to commence and if such notice be withdrawn by an employer, the employee, if leave is postponed, shall be compensated by the employer for any reasonable out of pocket loss occasioned thereby; in case of dispute to be settled by the Tasmanian Industrial Commission.

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(e) Time of Taking Leave

Subject to the provisions of subclause (n):

- (i) Leave to which an employee may become entitled hereunder shall be granted by the employer within 12 calendar months of the same becoming due.

**PROVIDED** that where there is agreement between the employer and employee, this shall be in writing and duly signed by the parties and become part of the employer's records.

**PROVIDED ALWAYS** that if because of the conditions operating in any particular industry or of circumstances over which there is no control, an employer considers it impossible to grant leave to any employee within the said period, the employer may, by agreement with the appropriate union, postpone such leave until a later date and in default of agreement, may submit the matter to the Tasmanian Industrial Commission.

**PROVIDED FURTHER** that in very exceptional circumstances payment may be made for the whole or any part of the leave as has been prescribed, provided that consent of the local branch of the union has been obtained.

- (ii) Where an employee has become entitled to annual leave hereunder, but leaves or is dismissed for any cause before such leave is granted, the employee shall be paid 4 weeks wages in lieu thereof.

(f) Payment in Lieu Prohibited

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided in subclauses (e) and (m) hereof, payment shall not be made or accepted in lieu of annual leave. If an employer fails to grant leave within the period or any postponement thereof mentioned in subclause (e) hereof and is convicted on that ground for breach of this award and the employee is not a consenting party to such failure, the employer shall in addition to the wages payable under subclause (g) hereof, also pay to such employee a further sum equal to the wages payable under subclause (g) hereof.

(g) Payment for Period of Leave

- (i) Each employee before going on leave shall be paid the wages due for the period for which the employee is entitled to leave. For the purposes of this subclause and subclause (i) hereof the wages shall be at the amount prescribed in this award for the occupation at which the employee was ordinarily employed immediately prior to the commencement of leave or the termination of employment as the case may be, but in the event of an employee being engaged during a period of 4 weeks prior to such commencement or termination on 2 or more occupations entitling the employee to different rates of pay, the wages to be paid to such employee hereunder shall be the amount of the average weekly wages for ordinary working time over such period of 4 weeks.

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- (ii) In addition to the payments specified in this subclause an employee when proceeding on annual leave shall be paid a sum equal to 17 1/2% of his earnings.

(h) Leave Allowed Before Due Date

- (i) An employer may grant annual leave to an employee before the right thereto has accrued due, but where leave is taken in such a case a further period of annual leave shall not commence to accrue until the expiration of the 12 months in respect of which annual leave had been taken before it accrued.
- (ii) Where leave has been granted to an employee pursuant to subclause (h) (i) hereof before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may for each one completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment of one-twelfth of the amount of wages paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed in Clause 22 - Holidays With Pay hereof.

**PROVIDED** that in cases where such leave is granted at the request of the employee, the employer may when making payment under subclause (g) hereof, withhold from the employee a sum equal to one-twelfth for each complete month of qualifying period not served by the employee at the time of going on such leave and retain such sum until the expiration of such qualifying period.

(i) Proportionate Payment on Termination of Service

Proportionate payment shall be made in respect of each completed month of continuous service in any qualifying 12 monthly period when an employee lawfully leaves the employment or is terminated by the employer through no fault of the employee.

(j) Calculation of Continuous Service

- (i) For the purpose of this clause service shall be deemed to be continuous notwithstanding -
  - (A) Any interruption or determination of the employment by the employer if such interruption or determination has been made with the intention of avoiding obligations hereunder in respect of annual leave.
  - (B) Any absence from work of not more than 91 days in the 12 months on account of sickness or accident (proof whereof shall be on the employee).

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- (C) Any absence on account of leave granted, imposed or agreed to be the employer.
- (D) Any absence due to reasonable cause, proof whereof shall be on the employee.

**PROVIDED** that in cases of personal sickness or accident or absences with reasonable cause, the employee to become entitled to the benefit of this subclause, shall if practicable inform the employer in writing within 24 hours after the commencement of such absence of an inability to attend for duty and as far as practicable the nature of the illness, injury or cause, and the estimated duration of the absence.

- (2) In calculating a period of 12 months continuous service -
  - (A) (i) Any annual leave taken therein;
  - (ii) Any absences of the kind mentioned in (A) and (B) of paragraph (i) hereof; shall be counted as part of such period.
  - (B) In respect of absences of the kind mentioned in (C) and (D) of paragraph (i) hereof the employee shall serve such additional period as part of qualification for annual leave as will equal the period of such absences.
  - (C) (i) Where an employee is absent from work for any reason whatsoever, the employer shall, if so requested by the employee, notify the employee within 14 days of the receipt of such request whether the employer regards such absence as breaking either conditionally or unconditionally the continuity of service of such employee. If the employee does not make such a request within 7 days of returning to work after any such absence, such absence shall be deemed to have broken such continuity. If the employer does not give such notice within the said 14 days such absence shall not be deemed to be such a break. The employee shall make such request in writing and shall deliver same to the employer's office at the factory or depot where the employee is employed or if there be no such office, to the manager of such factory or depot, or in the absence of the manager, to the employees' foreman. The employer shall give the notification to the employee by having the same delivered to such employee personally in writing.
  - (ii) Where an employee has been absent from employment, and the employer has notified the employee that such absence is regarded as a break in the continuity of service, the employee may within 14 days of such notification from the employer appeal to the Tasmanian Industrial Commission against such notification of the employer.

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(k) Calculation of Month

For the purpose of this clause a month shall be reckoned as commencing with the beginning of the first day of the employment or period of employment in question and as ending at the beginning on the day which in the latest month in question has the same date number as that which the commencing day had in its month and if there be no such date number in such subsequent month shall be reckoned as ending at the end of such subsequent month.

(l) Calculation of Service

Where the employer is a successor or assignee or transmittee of a business if an employee in the employment of the employer's predecessors at the time when the employee became such successor or assignee or transmittee the employee, in respect of the period during which the employee was in the service of the predecessor, shall for the purpose of this clause be deemed to be in the service of the employer.

(m) Annual Close Down

Where an employer closes down his plant or section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the plant, or section or sections concerned, the following provisions shall apply:-

- (i) The employer may, by giving to the employees concerned not less than one month's notice of the intention so to do, stand off for the duration of the close down all employees in the plant or section or sections concerned, and allow to those who have not then completed a 12 monthly qualifying period paid leave on a proportionate basis for each completed month of continuous service.
- (ii) An employee who since the close of the last 12 monthly qualifying period has completed a further month or more of continuous service shall be allowed leave and shall also be paid on a proportionate basis in respect of each completed month of continuous service performed since the close of the last 12 monthly qualifying period.

(n) Disputes

Any dispute as to the rights of an employee to or with respect to annual leave shall be dealt with by the Tasmanian Industrial Commission.

**10. ARTICLES OF CLOTHING**

- (a) Where an employee is required by law or by the employer to wear any special uniform, cap, overall, or other article, it shall be supplied and paid for by the employer.

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- (b) Where an employee is required by the employer to continually work in conditions which, because of their nature, the clothing would otherwise become saturated, the employee shall be provided with suitable protective clothing free of cost. Such protective clothing shall remain the property of the employer and the employee shall be liable for the cost of replacement of any article of protective clothing which is lost, destroyed, or damaged through the negligence of the employee.

#### **11. AWARD TO BE EXHIBITED**

A copy of this award and any variation thereto shall, as soon as the official print is available, be posted and kept posted in a prominent place where it is easily accessible to the employees.

#### **12. CASUAL EMPLOYEES**

- (a) A casual employee for working ordinary time shall be paid per hour one-thirty-eighth of the weekly rate prescribed by this award for work which he performs plus 20% per day or portion thereof. A minimum payment as for 4 hours shall be paid.
- (b) A casual employee shall be notified at the end of the day if his services are not required next working day. Failing such notice a full day's wages shall be paid for the next working day.
- (c) The time to be worked by a casual employee without payment of overtime rates shall not exceed 8 hours on any one day from Monday to Friday inclusive.

#### **13. CHANGE (MONEY)**

Where an employer requires an employee to give change to clients, such change shall be supplied by the employer.

#### **14. CHANGE OF PLACE OF EMPLOYMENT**

Where an employer transfers an employee, after the employee comes to work, from the place from which the employee usually works to another place, fares to and from such altered place shall be paid by the employer to the employee whether the employee travels by cycle or otherwise, except when transported by the employer.

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## **15. 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, grandchild 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 3 ordinary 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.

## **16. CONTRACT OF EMPLOYMENT**

Weekly Employment

- (a) Except as hereinafter provided, employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.
- (b) Employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the case may be. This shall not affect the right of the employer to dismiss any employees without notice for inefficiency, neglect of duty, or misconduct and in such cases all moneys due shall be paid to the employee forthwith.
- (c) An employee not attending for duty shall, except as provided by Clauses 22 - Holidays With Pay, 9 - Annual Leave and 38 - Sick Leave hereof, lose pay for the actual time of such non-attendance.
- (d) Where a notice is given by an employer purporting to expire within the week next preceding Christmas Day or Good Friday, but the employer expressly or implies by allowing the employee to believe that the employee is to resume work not later than one week after New Year's Day or Easter Monday, as the case may be, such notice shall have no effect and the engagement shall be deemed to have continued unaffected by such notice.
- (e) A weekly employee shall not be changed to a casual employee within the week next preceding Christmas Day or Good Friday.

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- (f) Notice to determine the engagement which is given every week or otherwise in such manner that the employee is not able to know with certainty a week before a particular date whether the engagement will or will not be determined by the employer upon that date shall not be deemed a valid notice unless given during a general or shipping or coal strike.

## **17. 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.
  - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
  - (iv) The relevant union must be a party to the agreement.
  - (v) The relevant union shall not unreasonably oppose any agreement.
- (c) An 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.



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## **18. FIRST AID**

In each establishment the employer shall provide an equipped first aid chest at a place reasonably accessible to all employees. Such a chest, shall as to its contents, comply with any State Act or Regulation enforced from time to time.

An employee holding a current first aid qualification from St. John Ambulance, Red Cross or similar body and appointed by the employer to perform first aid duties shall be paid, in addition to wages \$6.50 for any week so appointed. The employer shall reimburse the cost of fees for any courses necessary for an employee covered by this clause to obtain, and maintain current, the appropriate first aid qualification.

## **19. GEAR TO BE PROVIDED**

The employer shall provide all gear necessary for the loading and unloading of vehicles and the securing of loads thereon.

## **20. HEAVY ARTICLES**

An employee unaided by proper auxiliary appliances or by another man shall not be permitted to lift or carry goods over 55 kg in weight.

## **21. HIGHEST FUNCTION**

An employee called upon for 2 or more hours in any day to perform duties in a classification carrying a higher rate than the ordinary classification shall be paid the higher rate for such day. Where the time spent in the higher classification is less than 2 hours payment at the higher rate shall be for the time so worked.

**PROVIDED** that an employee shall not be transferred to perform a class of work providing a lesser minimum rate of wage than that at which the employee is usually engaged, unless given a week's notice.

This provision shall not apply where the employee performs work of a higher classification as a part of a structured training programme up to a maximum of twenty (20) days duration.

## **22. HOLIDAYS WITH PAY**

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:- 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.

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- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, the employee had been at work.
- (c) (i) For all time worked by a weekly employee on such holidays, payment shall be made at the rate of time and a half. The minimum payment shall be as for 4 hours worked.
- (ii) Payment, for work on a holiday shall be in addition to any amount payable in respect of the weekly wage.

**PROVIDED** that if an employee is required to work on a holiday, other than Good Friday and Christmas Day, during hours which if the day were not a holiday would be outside the range of ordinary working time as mentioned in Clause 23 - Hours of Work hereof, the employee shall be paid for such hours at double time instead of the time and a half as hereinbefore provided in this subclause.

**PROVIDED ALWAYS** that the employee shall be paid double and a half time for all overtime worked on Good Friday and Christmas Day.

- (d) (i) For all time worked by a casual employee on such holidays, payment shall be made at the following rate - on Good Friday and the Christmas Day holiday double and a half time.
- (ii) The minimum payment shall be as for 4 hours work. As well as the payment prescribed by this subclause the additional rate prescribed by Clause 12 - Casual Employees shall be paid.
- (e) Where a weekly employee is entitled to any holiday prescribed by this award, the employer shall notify such employee on the working day immediately preceding such holiday if the employee's services are required thereon and if such notice be not given the employee shall be entitled to take such holiday without deduction of pay.
- (f) If an employer intends to carry on business on a day generally observed as a holiday, although not prescribed as such in this award, the employer shall not be entitled to make a deduction from the wages of any weekly employee who fails to be present for duty on that day unless the employer shall have given the employee notice of the intention to carry on business that day.
- (g) An employer may by agreement with the employee work that employee on any public holiday prescribed in subclause (a) provided an agreed substitute day off is provided at the penalty equivalent. The substitute day shall by agreement between the employer and the employee be taken either within 28 days of the entitlement being accrued or as an addition to annual leave.

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### **23. HOURS OF WORK**

- (a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:-
- (i) Seven hours thirty six minutes per day; or
  - (ii) Eight hours per day on four days and six hours on one day in each week; or
  - (iii) Eight hours per day on nine days and four hours on one day in each fortnight; or
  - (iv) Eight hours per day on nineteen days with an accumulated rostered day off; or
  - (v) Eight hours per day with an accumulation of rostered days off up to a maximum of five.

The method of implementation shall be determined on a Company by Company basis, whereby the primary consideration shall be the efficient maximisation of customer service in each establishment. In the event of a dispute in relation to the method of implementation, the procedures set out in Clause 37 - Settlement of Disputes shall be followed without industrial disputation.

- (b) (i) Subject to the exceptions hereinafter provided the ordinary hours of work are to be worked in 5 days of not more than 8 1/4 hours (Monday to Friday inclusive) and one day (Saturday) of not more than 4 hours, or 5 days of not more than 8 1/4 hours (Monday to Friday inclusive) continuously, except for meal breaks, between 7.00 a.m. and 6.00 p.m., Monday to Friday inclusive, and 7.00 a.m. and 12.30 p.m. on Saturday.
- (ii) In localities where the recognised half-holiday is on a day other than a Saturday, the day so recognised may be substituted for Saturday for all the purposes of this award.
- (c) Five-day week - In any case in which the ordinary week's work of 38 hours can be performed in 5 days as aforesaid without:
- (i) detriment to the public interest;
  - (ii) loss in the value of goods handled or to be handled;
  - (iii) reducing the efficiency of production; or
  - (iv) reducing the efficiency of the necessary service, the employer shall allow those employees who so desire to do so to work their ordinary hours in 5 days as aforesaid. Any dispute as to whether the ordinary hours of work can in any case or cases be worked in 5 days without detriment, loss or reduction as aforesaid, shall be determined by the Tasmanian Industrial Commission, upon application made by or on behalf of the employees.

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Upon such an application, proof that the working of a 5 day week will result in such detriment, loss or reduction as aforesaid shall be upon the employer.

It is a condition of the allowing of a 5 day week hereunder that, if required, employees shall comply with the reasonable and lawful orders of the employer as to working overtime, including the working of overtime on Saturday.

#### **24. HOUSING**

- (a) Any employee required by the employer to live at a garage, shall be provided with suitable accommodation free of cost.
- (b) If an employer provides proper housing accommodation for an employee and family, and requires the employee to live there, the employer shall be entitled to charge a rent not exceeding eighty per cent of the standard market rental for that type of accommodation in the locality.

#### **25. MEAL TIMES**

- (a) (i) Subject to subclause (b)(i) below each employee shall be allowed an unpaid meal break of not less than 45 minutes and not more than 1 hour to be taken between 11 am and 3 pm.

**PROVIDED** that by agreement between the employer and the majority of employees at an establishment the meal break may be less than 45 minutes. Such agreement shall be notified to the relevant union within 7 working days.

- (ii) An employee required to work through the customary meal break shall be paid at the rate of ordinary time, in addition to any payment due in respect of a weekly or casual wage, until such time as the meal break begins."
- (b) (i) Except as otherwise provided in this clause, no employee shall be required to work for longer than 5 1/2 hours without a break for a meal.
- (ii) All time worked over 5 1/2 hours until such a break is allowed shall be paid for at the rate of ordinary time, the payment to be in addition to any payment due in respect of a weekly or casual wage.
- (iii) This subclause shall not apply to the evening meal time in the case of any employee returning to the yard or depot after the conclusion of any journey or delivery where such employee ceases work not later than 7 p.m. on Monday to Friday inclusive.

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- (c) (i) Where an employee is required otherwise than because of the employee's own default or delay to continue working after 6 p.m. on Monday to Friday inclusive, or 1 p.m. on Saturday, without having been informed in some way on the preceding working day that the employee will be so required, the employee shall be allowed \$9.25 as meal money.
- (ii) An employee who is notified under this subclause that the employee will be required to continue working, but who is not so required to continue working, shall be paid the prescribed meal money.
- (iii) This subclause shall not apply in the case of any employee returning to the yard or depot after the conclusion of any journey or delivery where such employee ceases work not later than 7 p.m.
- (iv) The obligation to pay ordinary time under this clause in addition to weekly or other wages and overtime under any other clause shall not be cumulative, but the employee, in cases coming within this clause, shall be entitled only to the higher payment.

## **26. NO REDUCTION IN WAGES**

Nothing in this award shall in itself operate to reduce the rate of pay for any classification in existence at the commencing date of this award.

## **27. NOTICE BOARD**

Each employer shall permit a notice board to be erected at the depot or garage for the purpose of posting any notices thereon in connection with union business; such notice board to be in a prominent position.

## **28. OCCUPATIONAL SUPERANNUATION**

### (a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into funds known as TASPLAN or CARE or any other approved fund (as defined) where an exemption has been granted under subclause (c) of this clause in respect of all **eligible employees (as defined) as from 9 July 1990.**

**PROVIDED** that, in the case of all eligible casual and part-time employees, contributions shall only be made where the employee works at least 38 hours during a fund billing statement month.

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- (ii) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (iii) 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

**'Eligible Employee'** means an employee whose rate of pay is provided for in one of the following subclauses in Clause 8 - Wage Rates of the award:

In Group I - Seller of Wood and/or Coal

- "1. Bench hand and all others not elsewhere provided for"; and

In Group II - Seller of Oil Fuels and the Distributor of Petroleum Products

- "A" Storeman

- "C" Clerks

whether employed on full-time, part-time or casual basis and who has had at least three (3) months continuous service with the employer but excludes the spouse of the employer and children of the employer. Where an eligible employee has completed at least three (3) months continuous service with the employer then the superannuation contributions shall be made from 9 July 1990.

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

**'Ordinary Time Earnings'** shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

**'TASPLAN'** shall be an approved fund established by trust deed made on 24 March 1987.

**'CARE'** means the Clerical Administrative and Retail Employees Superannuation Plan established by trust deed on 18 December 1986.

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(c) Exemptions

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

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 1 January 1990 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to 1 January 1990 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or CARE.

(d) Procedure for Seeking Exemption

- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 9 August 1990 for hearing and determination.

Such application shall contain the following information:

- (A) name of fund into which the funds are to be paid;
  - (B) evidence of the funds compliance with Commonwealth Operational Standards;
  - (C) summary of structure and benefits;
  - (D) level of administration charge; and
  - (E) any other relevant information.
- (ii) Any application shall, in the first instance, be considered by the union(s) party to the award which, in each case, have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
  - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
  - (iv) An employer who commences a new business after 9 July 1990 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one (1) month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 9 July 1990.

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- (v) For the purposes of this clause, the following companies are exempt from contributing to either TASPLAN or CARE for those employees for whom contributions - equivalent to the amount nominated in subclause (a) - have been made into the funds set out below on or prior to 1 January 1990

## **29. OVERTIME**

- (a) (i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.
- (ii) The union shall not in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this clause.
- (b) For all work done outside ordinary hours the rates of pay shall be time and a half for the first 2 1/2 hours and double time thereafter, such double time to continue until the completion of the overtime worked.

Except as provided in this subclause and subclause (c) hereof, in computing overtime each day's work shall stand alone.

- (c) Rest Period After Overtime

When overtime work is necessary it shall, whenever reasonably practicable be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not at least 10 consecutive hours off duty between those times, shall, subject to this subclause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee shall be paid at double rates until released from duty for such period and shall then be entitled to be absent until the employee has 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (d) Call Back

- (i) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 4 hours work at the appropriate rate for each time so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full 4 hours if the job the employee was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for an employee



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to return to the employer's premises to perform a specific job outside ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working hours.

- (ii) Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (c) hereof where the actual time worked is less than 4 hours on such recall or on each of such recalls.

(e) Standing By

Subject to any custom now prevailing under which an employee is required regularly to be in readiness for a call back, an employee required to be in readiness to work, after ordinary hours, shall until released, be paid standing-by time at ordinary rates from the time from which the employee is so told to be in readiness.

(f) Transport of Employees

When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer shall provide a conveyance to the employee's home, or pay the employee's current wage for the time reasonably occupied in reaching home.

(g) Time Off in Lieu

Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime. Provided that such time off shall be paid at the ordinary rate.

### **30. 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.

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

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

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

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

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

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

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

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

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

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

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- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
    - (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
      - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
      - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
    - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
    - (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
    - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

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

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

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

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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:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
  - (1) he will take that period of paternity leave to become the primary care-giver of the child;
  - (2) particulars of any period of maternity leave sought or taken by his spouse; and
  - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
  - (1) the birth occurring earlier than the expected date; or
  - (2) the death of the mother or the child; or
  - (3) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

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(f) Variation of Period of Paternity Leave

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

(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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



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(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.

### **PART C - ADOPTION LEAVE**

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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**'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;
- (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.

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(d) Certification

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

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

(e) Notice Requirements

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

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- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
    - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and employee.
  - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

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(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

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

#### **PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

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

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

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

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

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

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

(b) Entitlement

With the agreement of the employer:

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- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
  - (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
  - (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
  - (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
  - (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.
- (d) Effect of Part-time Employment on Continuous Service
- Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.
- (e) Pro Rata Entitlements
- Subject to the provisions of this part and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.
- (f) Transitional Arrangements - Annual Leave
- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

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- (ii) (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

(i) Termination of Employment

- (i) T p 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.



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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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- (iv) Unbroken service as a replacement employee shall be treated as continuous service as provided for in subclause (a) - Definitions, '**Continuous service**' of this part.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

### **31. PART-TIME EMPLOYEES**

A part-time employee (as defined) may be engaged in any of the classifications covered by Section C - Clerks, Group II of Clause 8 - Wage Rates of the award provided such employee accepts employment on the following terms:

- (a) The rate shall be equal to the appropriate weekly rate divided by 38.
- (b) The provisions of this Award in respect to annual leave, compassionate leave, sick leave and holidays shall apply on a proportionate basis.

All other conditions of employment shall be as for weekly hire employees.

- (c) The ordinary hours of work of part-time employees shall be worked in accordance with Clause 23 - Hours of Work hereof.

**PROVIDED** that no part-time employee shall work less than 20 hours per week.

Full time employees as at the beginning of the first full pay period on or after 1 November 1988 shall not have their ordinary hours of work reduced as a result of this clause.

### **32. PAYMENT OF WAGES**

- (a) Wages shall be paid weekly and not later than Thursday of the week of payment. By agreement between the employer and the majority of employees wages may be paid by means other than cash.

**PROVIDED** that:

- (i) In the absence of agreement with the majority of employees an employer may introduce payment of wages by electronic funds transfer without cost to the employee by the giving of three months notice; and
- (ii) By agreement with the majority of employees at an establishment wages may be paid at fortnightly intervals.

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- (b) If any employer fails to make payment to any employee as prescribed on pay day, the employer shall pay to each such employee \$1 for each day and every day or part thereof during which such default continues unless the employee satisfies the Tasmanian Industrial Commission that such failure is due to some act on the part of the employee, or to circumstances not under the employer's control and which could not have reasonably been foreseen and which the employer took reasonable steps to avoid or overcome.
- (c) Notwithstanding anything herein contained, an employer shall pay to an employee who leaves or is dismissed all moneys due forthwith, failing which the employer shall pay to the employee the sum of \$1 for each and every day or part thereof during which such default continues.

### **33. PREFERENCE TO UNIONISTS**

- (a) Preference of employment shall be given to members of the Tasmanian Branch of the appropriate union, provided they are competent and able to do the duties required, and if no such persons are available, then to persons who give an undertaking in writing to become and remain members of the appropriate union upon engagement.
- (b) Where a person can satisfy the employer and the union, that the person has genuine conscientious grounds for not joining a union, then that person shall be exempt from the requirement to join, on condition that the person contributes each year, an amount equivalent to the annual union subscription to a charity nominated by the union, and that such contribution to a charity shall be made within one month of engagement of that employee.

To be granted exemption as a conscientious objector the applicant must state the person's complete objection to joining all unions, not a union or particular unions.

### **34. REST PERIODS**

Employees shall be allowed a rest period of 10 minutes during each period of at least 4 hours ordinary working time. This provision shall also apply to work performed on Saturday afternoons, Sundays and holidays.

### **35. RIGHT OF ENTRY**

For the purpose of interviewing employees on legitimate business, duly accredited union representatives, after advising the employer representative, shall have the right to enter an employer's premises during a mid-day meal break, before commencing and after the cessation of work each day.

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**PROVIDED** that where any employees are working at times which preclude a representative from interviewing them during the mid-day meal break, the representative shall have the right to enter the employer's premises for the purpose of interviewing such employees at such time and under such conditions as may be mutually arranged by the representative and the employer and provided that the union representative first approaches the appropriate employer representative before interviewing any such employee.

### **36. SATURDAY WORK - FIVE-DAY WEEK**

A day worker on a 5 day week required to work overtime on a Saturday shall be afforded at least 4 hours work or paid for 4 hours at the appropriate rate, except where such overtime is continuous with overtime commenced on the day previous.

### **37. SETTLEMENT OF DISPUTES**

Subject to the Industrial Relations Act 1984 (as amended) any matter in dispute shall be the subject of negotiations and settlement in the following manner:

- (i) The matter shall be taken up by an accredited union delegate or union organiser with the employer concerned or by the employer concerned with the accredited union delegate or union organiser, as the case may be.
- (ii) If the matter in dispute is not settled at the preceding stage, it may be referred by either the branch secretary (or nominee) or the employer concerned to the Tasmanian Industrial Commission for settlement.
- (iii) The decision of the Tasmanian Industrial Commission shall be accepted by the parties as final.
- (iv) Where any of the provisions of this clause have been invoked by any party, the parties shall use their good offices and best endeavours to ensure that work continues without limitation during proceedings under this clause.
- (v) Where a bona fide safety issue is involved, the parties shall give immediate priority to resolving the issue. In resolving the issue, the parties shall have regard to recognised safety standards and any relevant legislation.

### **38. SICK LEAVE**

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) the employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation;

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- (ii) the employee shall, wherever possible, inform the employer of an inability to attend for work prior to the commencement of work on the first day of such absence and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence.
  - (iii) the employee shall prove to the satisfaction of the employer (or the event of a dispute, the Tasmanian Industrial Commission), that the employee was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
  - (iv) the employee shall not be entitled in any year to sick leave credit in excess of 2 weeks of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

### **39. STARTING TIME**

- (a) Where proper facilities are provided for an employee to sign on when beginning work and sign off when leaving work, the work of such employee shall be deemed to commence when the employee signs on at the yard or depot in the morning and finish when the employee signs off in the evening.

**PROVIDED** that in the case where an employee, driver of a motor vehicle, takes the vehicle to his home at the end of the day's work, the employee's finishing time shall be deemed to be the time of the arrival at the home and the employee's starting time on the following morning shall be at the time at which the employee signs on at the employer's yard or depot, unless the employee has to proceed direct from his home with or to do a job without first going to his employer's yard or depot, in which case the employee's starting time shall be the time of leaving home.

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- (b) Each employer shall fix a regular starting time for each of the employees which shall, with respect to each such employee, be the same time in each day of the week. In any case where it is not so fixed, such starting time shall be 7.15 a.m. until it is otherwise fixed by the employer. Where an employer desires to vary or change the regular starting time of an employee or employees the employer shall give one week's notice of such variation or change to the particular employees concerned, and also post a notice of the intended change at the depot or yard.

#### **40. 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 unions shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.
- (c) An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, 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.

#### **41. SUNDAY WORK**

All time of duty on Sunday shall stand alone and shall be paid for at the rate of double time with a minimum of 4 hours pay at double time.

#### **42. TIME BOOKS**

- (a) Each employer shall, at the depot or yard at or from or in connection with which the employee works, or at an office convenient thereto, keep a record time book showing the name of each employee, in which shall be entered the time of starting and finishing work each day, the work performed and class of vehicle driven and maker's capacity and the weekly rate of pay, for such work, and the amount of overtime paid to each employee.

**PROVIDED** proper facilities are provided by the employer for the purpose, such records or time book shall (so far as his starting time and finishing time each day is concerned and also the work performed and class of vehicles driven and maker's capacity) be made or entered each day by the employee at the time of starting and finishing work.

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- (b) The age of each employee receiving less than the adult wage shall be entered in the record or time book.
- (c) Such record or time book shall, on demand, be produced by the employer, or, in the employer's absence, the person in charge or who may be reasonably presumed to be in charge of such depot, yard or office mentioned in subclause (a) hereof or the time books kept thereat, to any officials (not more than 2 in number at any one time) of the union duly authorised in writing by the president and the secretary of the local branch or sub-branch of the union at the place where the record or time book is kept. Any demand for production of the record or time book made during ordinary working hours or any ordinary working day, excepting pay day, shall be complied with forthwith. If at the time any such demand shall not be reasonably suitable to the employer (the burden of proof whereof shall be on the employer) for a full and particular inspection, and examination of such time or record by the officials the employer shall nevertheless produce at such time such time book or record to the officials who shall be then entitled to examine such book or record for the purpose of seeing the nature and general state and conditions thereof.

A time shall then be agreed upon for the further examination of particulars thereof by such officials and, if not agreed upon, such time between the above hours shall be fixed by the officials and shall not be less than 24 hours or 48 hours in the case of a demand on the day before pay day after the time of the first demand. The officials shall in fixing such time have due regard to the exigencies of the employer's business and must complete each inspection as quickly as reasonably practicable.

- (d) **PROVIDED** that an employer may, at the employer's option, in lieu of a time book, provide a mechanical clock for the purpose of recording the time of each employee, in which case each employer shall, at the end of the week, enter or record the wages and overtime received on some card or check used in connection with such clock.
- (e) Where an employee performs work for which a special rate is provided a record of such work and the nature of the same shall be recorded in the time book or equivalent record.

#### **43. TRAINEE CLERK (AS DEFINED)**

- (a) Trainee clerk (as defined) shall be engaged for a period of twelve (12) months as a full-time employee.

**PROVIDED** that a trainee shall be subject to a satisfactory probation period of up to one (1) month.

- (b) Where possible, traineeship positions should be additional to normal staff numbers.

**PROVIDED** that no existing weekly employees shall be displaced by a trainee.

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- (c) A trainee clerk (as defined) will received on-the-job training by the employer as specified in the training agreement (as defined) and off-the-job training will be provided through the Division of Technical and Further Education or such other institution approved by the Training Authority of Tasmania.
- (d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.
- (e) Time spent off-the-job on training shall be allowed without loss of continuity of employment.
- (f) Where an employer continues the employment of a trainee clerk (as defined) after completion of the "traineeship period", such training period" shall be counted as service for the purpose of the award.
- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular section, overtime is involved in the operation of that section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The union shall be afforded reasonable access to trainees for the purposes of explaining the role and functions of the union.
- (i) Trainees shall not perform higher duties unless in the course of their traineeship.
- (j) Trainees shall be exempt from action in respect of industrial disputes. However the employer shall observe the provisions determined by the Training Authority of Tasmania in respect of the use of trainee clerks (as defined) in the time of industrial disputes.

#### **44. TRAVELLING ALLOWANCES**

- (a) An employee engaged in ordinary travelling on duty or on work at which the employee is unable to return to home at night shall be paid such expenses reasonably incurred in travelling, meals and accommodation. Provided that accommodation shall be of reasonable standard and comparable to what the employee would enjoy at home, including minor incidentals.
- (b) An employee prevented from returning with the turnout to the depot or yard from which the employee started shall be paid any travelling expenses incurred, and as if for time worked for the time it reasonably takes to get to home beyond the time it ordinarily would have taken to get to home from the depot or yard.



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#### **45. UNAUTHORISED PRESENCE ON VEHICLES**

An employee shall not permit unauthorised person or persons to accompany the employee on any company vehicle or permit any such person or persons to assist in the delivery of goods, wares, merchandise or material, unless such person or persons have been engaged as an employee or is the owner of such goods, wares or merchandise or material or is the agent of such owner.

#### **46. UNION DELEGATE**

An employee appointed as union delegate in a depot or garage shall upon notification thereof to the employer by the branch or sub-branch secretary of the union, be recognised as the accredited representative of the union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees in the depot or yard.

R J Watling  
**COMMISSIONER**

16 April 1996