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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

PHOTOGRAPHIC INDUSTRY AWARD

ORDER BY CONSENT

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

CLAUSES 4, 5, 8 AND 29 ARE VARIED, AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Photographic Industry Award".

2. SCOPE

This award is established in respect of photographers or sellers of photographic supplies and/or equipment.

3. ARRANGEMENT

<u>Subject Matter</u>	<u>Clause No.</u>	<u>Page No.</u>
Title	1	2
Scope	2	2
Arrangement	3	2
Date of Operation	4	3
Supersession and Savings	5	3
Parties and Persons Bound	6	3
Definitions	7	4
Wage Rates	8	6
Annual Leave	9	13
Casual Employees	10	14
Clothing and Clothing Allowance	11	15
Compassionate Leave	12	15
Contract of Employment	13	16
Expenses and Accommodation	14	17
Holidays with Pay	15	17
Hours of Work	16	17
Mixed Functions	17	19
Occupational Superannuation	18	19
Overtime	19	20
Parental Leave	20	21
Part-time Employees	21	38
Payment of Wages	22	38
Ratio of Juniors to Adult Employees	23	39
Rest Period	24	39
Saturday, Sunday and Holiday Work	25	39
Settlement of Disputes	26	40
Sick Leave	27	40
Structural Efficiency	28	41
Tea Money	29	42
Traineeships	30	42

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4. DATE OF OPERATION

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

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Photographic Industry Award No. 1 of 2003 (Consolidated) and No. 2 of 2003.

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are employed in the industry specified in Clause 2 - Scope;
- (c) the following 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 Shop, Distributive and Allied Employees Association, 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 Pharmacy Guild of Australia, Tasmanian Branch, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
 - (ii) The Retail Traders Association of Tasmania, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (iii) the Tasmanian Chamber of Commerce and Industry Limited;
 - (iv) Australian Retailers Association - Tasmania Division.

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7. DEFINITIONS

'Casual employee' means any person who is employed on a casual basis and includes any person who is employed for a period not exceeding 4 weeks at any one time.

'Clerk' means a clerk, bookkeeper, timekeeper, cashier and typist, including typist-stenographer.

'Commercial traveller' shall mean a person over the age of 21 years employed outside the employer's place of business in the process, trade, business or occupation of:

- (a) soliciting orders for articles, goods, wares, merchandise or materials:
 - (i) wholesale in quantity for resale;
 - (ii) to be used by the purchaser or by persons in the manufacture, production, preparation or distribution of commodities for sale;
- (b) soliciting orders for articles, goods, wares, merchandise or materials to be used by the purchaser or by the person from whom the order was solicited in his or their business, trade or occupation or (in the case of a public or semi-public body) for the purpose of its undertaking;

buying outside the employer's place of business for some person, firm or company engaged in wholesale business for resale in any form.

'Country traveller' shall mean a commercial traveller (as defined) who spends at least 2 week nights in any 1 week away from his normal place of residence or home town, but it shall be a condition of this award that an employer of a country traveller (as defined) shall at all times retain the right to instruct such traveller to remain away from his normal place of residence or home town until Friday and that a country traveller (as defined) shall comply with any instructions received from his employer regarding this matter.

'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.

'Sales assistant' means any employee who devotes any portion of his or her time to the sale of goods.

'Senior sales assistant' means:

- (a) the adult sales assistant who is second in charge of a department controlled by a department manager/owner and such an employee shall be deemed as second in charge only if so appointed by the employer or his representative.

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(b) an adult employee who is employed alone in a shop for the majority of the day and who accepts some responsibility for the security and general running of the shop.

'**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 (as defined), is agreed on by the employee and the employer.

'**Trainees**' shall be employees bound by a Training Agreement (as defined).

'**Traineeships**' means a system under the Australian Traineeship System comprising structured on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training approved by the Training Authority of Tasmania.

'**Training agreement**' shall mean an agreement registered under the provisions of the *Vocational Education and Training Act 1994* .

8. WAGE RATES

(a) Adult employees shall be paid in accordance with the following classification structure.

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
<u>Group 1</u>			
Storeman (Grade 1)	343.30	142.00	485.30
Storeman (Grade 2)	350.60	142.00	492.60

A storeman/woman working singly and/or a storeman/woman who has control of an isolated store where no direct supervision is exercised and is responsible for receipt, controls, issues and stock checking of goods and/or material notation and preparation of necessary documents.

Section Manager, i.e. an employee in charge of a section who is actually employed in that section and in direct contact with the customers, notwithstanding that he may be under the orders of a superior who does not devote the whole of his time to the management of this section:

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(i) If in charge of a section where 5 or more employees (including the section manager) are employed	358.10	142.00	500.10
(ii) If in charge of a section where 3 or 4 employees (including the section manager) are employed	352.30	142.00	494.30

Group 2

Clerks/Sales Assistants

First year's adult experience	310.00	142.00	452.00
Second year's adult experience	331.70	142.00	473.70
Third year's adult experience and thereafter	360.00	142.00	502.00

An accountant or chief clerk wholly responsible for the office work and who prepares the balance sheet and profit and loss account	478.90	142.00	620.90
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A clerk who is in charge of and responsible for the work of:

(i) 5 or more employees	425.50	144.00	569.50
(ii) 3 or 4 employees	409.10	142.00	551.10
(iii) 2 employees	400.90	142.00	542.90
Senior Sales Assistant (as defined)	376.50	142.00	518.50

Group 3

Photographer	363.30	142.00	505.30
Laboratory Technician (copying, enlarging, processing and retouching and the like)	363.30	142.00	505.30
General Assistant in a Photographic Shop/Laboratory	355.60	142.00	497.60
Printing/Photographic Printing Machine Operator	360.00	142.00	502.00

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Group 4

Country Traveller	418.30	144.00	562.30
Town or Local Traveller	383.90	142.00	525.90
Probationary Traveller	350.00	142.00	492.00

Group 5

Employee driving motor vehicle having maker's capacity of :

1.2 tonnes or less	355.20	142.00	497.20
Over 1.2 tonnes but not over 3 tonnes	359.10	142.00	501.10
Over 3 tonnes but under 6 tonnes	364.00	142.00	506.00

(b) Juniors

(i) Storeman Classifications

The minimum rates of wages for junior workers in these classifications shall be the undermentioned percentages of Storeman Grade 1:

Age	%
Under 16 years of age	55
16 to 17 years of age	65
17 to 18 years of age	78.5
18 to 19 years of age	93
19 to 20 years of age	100

(ii) All Others

The following percentages of the relevant classification rate shall be used to determine the minimum rate payable to junior employees in other than storeman classifications:

Age	%
Under 16 years of age	45
16 to 17 years of age	54
17 to 18 years of age	59
18 to 19 years of age	73
19 to 20 years of age	86
20 to 21 years of age	90

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PROVIDED that:

- (1) For clerks (as defined) and sales assistants (as defined) the relevant classification shall be the rate for the 2nd year of adult experience.
- (2) No junior employee engaged as a sales assistant (as defined) shall receive less than the rate for 16 to 17 years of age.
- (3) No junior employee engaged as a driver shall receive less than the percentage rate for 18 to 19 year olds of the relevant classification and the full adult rate shall apply to all drivers on reaching 20 years of age.
- (iii) The wages of junior workers shall be calculated to the nearest 10 cents.
- (iv) When determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior assistant in any of the trades covered by this award, experience obtained after reaching the age of 18 years shall be counted as adult experience.

(c) Additional Payments

- (i) In addition to the weekly rates prescribed herein the following additional amounts per week shall be paid to employees engaged as stenographers, audio-typists, tele-typists, accounting machine, data processing, tabulating machine, card punch and verifier operators.

Age	\$
Under 16 years of age	1.20
16 to 17 years of age	1.40
17 to 18 years of age	1.80
18 to 19 years of age	2.20
19 to 20 years of age	2.90
20 to 21 years of age	3.00
21 years of age and over	3.60

- (ii) Employees engaged as a driver handling money, i.e. an employee who collects or pays out money and who is responsible for the safe custody of the amounts so collected or carried to be paid out shall be paid per week the following in addition to his weekly wage:

	\$
For any amount handled over \$20.00	0.80
For any amount handled over \$20.00 but not exceeding \$200.00	2.30
For any amount handled over \$200.00 but not exceeding \$600.00	4.30
For any amount handled over \$600.00 but not exceeding \$1,000.00	4.90
For any amount handled over \$1,000.00	6.90

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(d) Supported Wage System

(i) Eligibility criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (iii) of this subclause) 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.

(ii) For the purposes of this subclause:

- (1) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (2) **'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.
- (3) **'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.
- (4) **'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.

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(iii) 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 (iv))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

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

(iv) 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:

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

(v) Lodgment of assessment instrument

- (1) 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.
- (2) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

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(vi) 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.

(vii) 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.

(viii) 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.

(ix) Trial Period

- (1) 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.
- (2) 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 (iv) and (v).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) 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 paragraph (iii) hereof.

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9. ANNUAL LEAVE

(a) A period of one hundred and fifty two hours paid annual leave shall be allowed annually after 12 months' continuous service on weekly hiring.

(b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one continuous period, or if the employer and the employee agree, in one of the following methods:

(i) in two separate periods, the lesser of which shall be not less than 7 consecutive days, i.e. 5 working days;

(ii) in any combination, provided one period shall be not less than 7 consecutive days, i.e. 5 working days.

(c) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Clause 15 - Holidays with Pay hereof fall within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

Except as provided in subclause (h) hereof, payment shall not be made or accepted in lieu of annual leave.

(e) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(f) Payment for Period of Leave

(i) All employees before going on leave shall be paid the amount of wages they would have received in respect of the ordinary time which they would have worked had they not been on leave during the relevant period.

(ii) In addition thereto all employees (including part-time employees engaged to work 20 or more hours per week) shall receive a loading of 17.5% on payments made for annual leave as prescribed in paragraph (i) hereof.

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(g) Leave Allowed before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause 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 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 one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 - Holidays with Pay hereof.

(h) Proportionate Leave on Termination of Service

(i) If after one months continuous service in any qualifying 12 monthly period an employee lawfully leaves his or her employment, or the employee's employment is terminated by the employer through no fault of the employee, the employee shall be paid at his or her ordinary rate of wage as follows:

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

(ii) The 17.5% leave loading prescribed in subclause (f)(ii) of this clause shall not apply to proportionate leave on termination of service.

(i) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident.

In calculating the period of 12 months' continuous service any such absence as aforesaid shall not, except to the extent of not more than 91 days in any 12 monthly period, be taken into account in calculating the period of 12 months of continuous service.

10. CASUAL EMPLOYEES

(a) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs.

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In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

(b) Penalty rates prescribed elsewhere in this award are applicable to casual employees. The 20 per cent loading prescribed elsewhere in this clause shall be paid for all hours worked including times when penalty rates are applicable.

PROVIDED that all penalty additions shall be calculated on the ordinary time rate excluding this loading. Viz:

Time and one half equates to 1.7)	of the ordinary
Double time equates to 2.2)	rate without
Double time and one half equates to 2.7)	the 20% loading

11. CLOTHING AND CLOTHING ALLOWANCE

Where an employee wears, when at work, a washable outer garment the laundering of same shall be paid for by the employer, provided that the cost does not exceed \$3.00 per week. If the employer provides the garment, laundering shall be at the employee's expense.

12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave 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.

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13. CONTRACT OF EMPLOYMENT

- (a) With the exception of employees engaged as casual employees, all employment shall be by the week and shall be terminated only by a week's notice by either party or by the payment or forfeiture of a week's wages, as the case may be provided that for employees engaged as pharmacists (as defined) a fortnight shall be read in lieu of a week. This shall not affect the right of the employer to dismiss any employee without notice for neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only.
- (b) The employer in the event of misconduct may suspend an employee without pay. The maximum period of suspension shall be one week. Prior to the implementation of a suspension, the union shall be advised of the intention to undertake such suspension. In the event that a union official cannot be contacted, the suspension will not be implemented for a period of at least 24 hours.

Should the employee not agree to the suspension the union shall have the right to refer the matter to the Tasmanian Industrial Commission. If upon examination the Tasmanian Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term of or rescind the suspension. Nothing in this subclause shall affect the right of the employer to dismiss an employee in accordance with the previous subclause.

- (c) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (d) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

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

- (e) Any direction issued by an employer pursuant to subclause (c) and (d) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

14. EXPENSES AND ACCOMMODATION

- (a) In addition to the remuneration payable under Clause 8 - Wage Rates of this award the employer shall make suitable arrangements to cover all reasonable expenses incurred by an employee required to travel in the course of his employment. Accommodation provided by an employer should be of an acceptable standard and suitable arrangements made for all meals whilst travelling on the employer's business.

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- (b) Arrangements established by an employer shall be discussed with the employee prior to the incurring of any expense.
- (c) An employee required to use his own car on any day shall be paid not less than 31 cents per kilometre.

15. HOLIDAYS WITH PAY

- (a) All employees other than casual employees (as defined), part-time employees (as defined) 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.

- (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, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed in Clause 25 - Saturday, Sunday and Holiday Work of this award.

16. 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 day off up to a maximum of five.

The method of implementation shall be determined on a store by store or where appropriate, department by department 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 provisions of Clause 26 - Settlement of Disputes shall be observed.

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PROVIDED that establishments which employ fifteen or more full-time employees subject to this award adopt one or both of the options contained in (iv) and (v) herein. In circumstances whereby the implementation of such options can be shown to be contrary to the efficient maximisation of customer service, an establishment may seek discussions with the relevant unions as to alternative methods of implementation. If agreement cannot be reached the matter may be referred to the Tasmanian Industrial Commission for resolution.

For the purposes of this clause 'establishment' shall mean an identifiable outlet or office.

- (b) The ordinary hours shall be worked between the hours of 7.00am and 6.00pm Monday to Friday inclusive.
- (c) The hours of work prescribed by this clause shall, except for a meal break of not less than 30 minutes nor more than 75 minutes, be continuous on each day. Such meal break shall be taken between the hours of 11.00am and 3.00pm.

In circumstances whereby a second meal break is required on any one day such break shall be not less than 30 minutes.

- (d) Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than 5 hours without a break of not less than 30 minutes for a meal.
- (e) In circumstances whereby a system of 'Rostered Leisure Days' (RLD's) applies, an employer with the agreement of the employee may in an emergency situation substitute the day an employee is to take off for another day.

PROVIDED that such agreement will not be unreasonably withheld.

- (f) Employees other than casual employees shall, notwithstanding anything contained in Section 49 of the *Industrial Relations Act 1984*, be paid the weekly wage prescribed for a week of 38 hours for each week that he is ready, willing and available for work during the hours prescribed herein and, in addition thereto, such overtime or other penalty rates, if any, that may have occurred during the relevant period.

17. MIXED FUNCTIONS

An employee engaged for half or more than half of one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day. If for less than half of one day he shall be paid the higher rate for the time so worked.

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18. OCCUPATIONAL SUPERANNUATION

(a) Contribution

An employer shall make an Occupational Superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into an approved superannuation fund in respect of all eligible employees (as defined) as from 1 October 1989.

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) Casual and Part-time Employees

In the case of eligible casual and part-time employees, contributions shall be made where the employee works at least 12 hours per week averaged over a fund billing statement month.

(c) Definitions

'Eligible employee' shall mean an employee classified in this award whether weekly, part-time or casual, who has had at least 6 months continuous service with an employer subject to this award. **PROVIDED** that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this award.

'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 mean the classification rate including overaward payments and loadings for shiftwork, part-time or casual work and any permanent all purpose allowance but shall exclude overtime payments, leave loading and/or Long Service Leave payments on termination of employment and allowances in the nature of reimbursement (such as meal money).

(d) Fund

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

- (i) Retail Employees Superannuation Trust
- (ii) TASPLAN

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(e) Unpaid Absence

The employer shall not be required to make a contribution on behalf of an employee who is absent from work without pay, and the employer's contribution in any week on behalf of such employee will be reduced by a proportionate amount.

(f) Exemptions

The following employers shall be exempt from using the nominated funds in subclause (d) herein:

- (g) Notwithstanding anything elsewhere contained in this clause, an employee who belongs to the religious fellowship known as Brethren and who holds a certificate issued by the Registrar pursuant to Section 32(9) of the Act may nominate an alternative complying fund into which the contributions shall be paid.

19. OVERTIME

- (a) For all work performed outside of the hours prescribed in Clause 16 - Hours of Work, payment shall be made at the rate of time and one half for the first 3 hours and double time thereafter.
- (b) An employee who is recalled to work overtime after a period of one hour from the time fixed for ceasing work, whether or not he has been notified before ceasing work, shall receive a minimum payment as for 3 hours worked.
- (c) A junior employee under the age of 18 years shall not be required to work overtime unless he or she so desires.
- (d) In computing overtime, each day's work shall stand alone.
- (e) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by thirty eight.
- (f) For the purpose of determining overtime entitlements of an employee, an employee who works ten minutes or more past the time fixed for ceasing work shall be paid overtime at the appropriate overtime rate for all time worked after the time fixed for ceasing work.

PROVIDED that this subclause shall not be used to obtain unpaid work from employees on a regular basis.

- (g) 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.

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20. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(c) Eligibility for Maternity Leave

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

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(d) Certificate

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

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

(e) Notice Requirements

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

(f) Transfer to a safe job

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

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

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(g) Variation of Period of Maternity Leave

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

(h) Cancellation of Maternity Leave

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

(i) Special Maternity Leave and Sick Leave

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

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

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

(j) Maternity Leave and Other Leave Entitlements

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

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

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

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

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

(n) Replacement Employees

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

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

'Maternity leave' means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

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

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

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

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

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

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and

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

(e) Notice Requirements

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

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

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

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

(3) other compelling circumstances.

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

(f) Variation of Period of Paternity Leave

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

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

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

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

(g) Cancellation of Paternity Leave

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

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(h) Paternity Leave and Other Leave Entitlements

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

(k) Return to Work after Paternity Leave

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

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

(l) Replacement Employees

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

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

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

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

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(c) Eligibility

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

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

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

(d) Certification

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

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

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(e) Notice Requirements

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

(f) Variation of Period of Adoption Leave

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

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

(g) Cancellation of Adoption Leave

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

(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

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

(l) Return to Work After Adoption Leave

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

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

(m) Replacement Employees

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

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

'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.

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'Spouse' includes a de facto spouse.

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

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

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

(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

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(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

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

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

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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- (1) that the employee may work part-time;
 - (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (3) upon the classification applying to the work to be performed; and
 - (4) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
 - (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
 - (iv) The terms of this agreement shall apply to the part-time employment.
- (i) Termination of Employment
 - (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
 - (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.
 - (j) Extension of Hours of Work

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

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

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(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

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

21. PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work 20 or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in this award, provided that payment therefor shall be made at the rate normally paid to such employees for a similar period of time worked.

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- (b) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work he or she performs. In addition thereto such employees shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

PROVIDED that in the case of part-time employees in receipt of a 20% loading, the penalty rates shall be calculated in the same manner as applies to casual employees (as defined) in Clause 10 - Casual Employees.

22. PAYMENT OF WAGES

- (a) Wages shall be paid weekly and not later than Thursday each week by one of the following methods:

cash (in employer's time);

cheque; or

electronic funds transfer.

PROVIDED that:

- (i) Where the method of payment is electronic funds transfer this shall be at no cost to the employee.
- (ii) By agreement with the majority of employees at an establishment the interval of payment may be fortnightly.
- (b) On each pay day an employee shall be issued a statement setting out the amount of wages to which he is entitled, the amount of deductions made therefrom and the net amount being paid.

23. RATIO OF JUNIORS TO ADULT EMPLOYEES

The maximum number of juniors to be employed shall not exceed the ratio of 2 juniors to every one adult.

24. REST PERIOD

Employees shall be allowed a rest period between the start of work and the midday meal break and a rest period between the resumption of work after midday meal break and the cessation of work for the day. One rest period shall be of 10 minutes duration and one of 5 minutes duration to be taken at such times as may be mutually arranged between the employer and the employees.

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25. SATURDAY, SUNDAY AND HOLIDAY WORK

For all work performed on Saturdays, Sundays and holidays with pay shall be made as follows:

- (a) Payment for any duty on a Saturday shall be made at the rate of one and one half times the ordinary rate for the first 3 hours and double time thereafter, with a minimum payment as for 3 hours worked.

PROVIDED that for employees of sellers of photographic supplies and/or equipment payment shall be:

- (i) Where the employer's business premises are regularly open for normal business and require manning on Saturday, payment shall be made at the rate of double time with a minimum payment as for 2 hours worked. However, where the employee was engaged prior to 1 November 1988 a minimum of 3 hours shall still apply.
- (ii) Where the employer's business premises are not open for normal business, payment shall be made at the rate of one and one half times the ordinary rate for the first 2 hours and double time thereafter.

- (b) Sundays

For all time of duty on a Sunday payment shall be made at the rate of double time with a minimum payment as for 4 hours worked.

- (c) Holidays with pay

Subject to the exceptions outlined in Clause 15 - Holidays with Pay, subclause (a), all time of duty on any of the holidays mentioned in Clause 15 - Holidays with Pay hereof, payment shall be made at the rate of double time and one half with a minimum payment as for 4 hours worked.

PROVIDED that for employees in wage groups 1, 4, and 5 payment shall be at the rate of double time.

26. 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:

Any matter of concern shall in the first instance be discussed between the employer and the employee.

- (a) 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.

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- (b) If the matter in dispute is not settled at the preceding stage, it may be referred by either the branch secretary (or his nominee) or the employer concerned to the Tasmanian Industrial Commission for settlement.
- (c) The decision of the Tasmanian Industrial Commission shall be accepted by the parties as final.
- (d) 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.
- (e) 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.

27. SICK LEAVE

- (a) An employee [other than one engaged as a casual employee (as defined), or a part-time employee (as defined) engaged to work less than 20 hours per week], 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;
 - (ii) the employee shall, as soon as possible, and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of his or her inability to attend for work, 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 in the event of a dispute, the Tasmanian Industrial Commission) that he or she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) the employee shall not be entitled in any year to sick leave in excess of seventy-six hours 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.

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- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his or her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

28. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase efficiency and productivity and to enhance the opportunities and job security of employees.
- (b) At each place of employment a consultative mechanism appropriate to the size, structure and needs of that place shall be established to consider efficiency measures. The consultative mechanism shall involve management, employees of the centre and the union(s) relevant.
- (c) Efficiency measures which may seek to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.
- (d) An appropriate classification structure shall be an issue for on- going discussion between the parties to the award.

29. TEA MONEY

- (a) An employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid \$12.70 meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Tasmanian Industrial Commission.
- (c) The payment prescribed in subclause (a) shall be made on the day on which the overtime is worked, prior to the meal break being taken, or by agreement of the employer and employee on the occasion of the next payment of wages.

30. TRAINEESHIPS (ATS)

- (a) Trainee (as defined) in clerical and sales positions shall be engaged for a period of twelve months as full-time employees, provided that trainees (as defined) shall be subject to a satisfactory probation period of up to one month.

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- (b) Where possible, traineeship (as defined) positions should be additional to normal staff numbers provided that no existing weekly employees shall be displaced by a trainee (as defined).
- (c) A trainee (as defined) will receive on-the-job training by the employer (or employers) as specified in the Training Agreement (as defined) and that 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.

PROVIDED that the total of on and off-the-job training will not exceed five days per week.

- (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 the employment of a trainee (as defined) by an employer is continued after completion of the traineeship (as defined) period, such traineeship (as defined) period shall be counted as service for the purpose of the award.
- (g) Under normal circumstances overtime shall not be worked by trainees (as defined). However, when during a training period in a particular shop, department or section, overtime is involved in the operation of that shop, department or section, overtime may be worked by the trainees (as defined). Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The weekly wages payable to trainees (as defined) (ATS) shall be determined by multiplying the appropriate junior rate as specified in Clause 8 - Wage Rates of this award by 39 (which represents the actual number of weeks spent on-the-job) and dividing that sum by 52.

The wage rate determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines. This figure is adjusted in accordance with National Wage Case Decisions.

PROVIDED that trainees' (as defined) rates shall be calculated in multiples of ten cents with any result of five cents or more being taken to next highest ten cent multiple.

- (i) Notwithstanding the provisions of Clause 23 - Ratio of Juniors to Adult Employees of this award the ratio provisions shall not apply to or include trainees (as defined).
- (j) Preference in continuation in employment shall be given to trainees (as defined) should vacancies occur at the successful completion of the traineeship (as defined).

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- (k) The union shall be afforded reasonable access to trainees (as defined) for the purposes of explaining the role functions of the union.
- (l) Trainees (as defined) shall not perform higher duties unless in the course of their traineeship (as defined).
- (m) Trainees (as defined) shall be exempt from action in respect to industrial disputes.

Tim Abey
COMMISSIONER

30 August 2004