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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T12144 of 2005)
Private Sector Awards

Tasmanian Trades and Labor Council

(T12156 of 2005)
Private Sector Awards

Tasmanian Trades and Labor Council

(T12157 of 2005)
Private and Public Sector Awards

The Australian Workers' Union, Tasmania Branch

(T12163 of 2005)
Private Sector Awards

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case July 2005 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002005 – Safety Net Review – Award rates to be increased by \$17 per week – Wage related allowances increased by 3% - Meal allowances increased to \$13.10 – Operative date ffpp 1 August 2005 – State Minimum Wage determined at \$484.40 – s.35(1)(b)

MEDICAL PRACTITIONERS (PRIVATE SECTOR) AWARD

ORDER BY CONSENT –

**No. 1 of 2005
(Consolidated)**

CLAUSES 4, 5, 8 AND 19 ARE VARIED, CLAUSES 11A TO 30 ARE RENUMBERED AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Medical Practitioners (Private Sector) Award".

2. SCOPE

This award is established in respect of the industry of a Medical Practitioner registered under the *Medical Act 1959* and engaged in private practice.

3. ARRANGEMENT

| <u>Subject Matter</u> | <u>Clause No</u> |
|-----------------------------------|------------------|
| Title | 1 |
| Scope | 2 |
| Arrangement | 3 |
| Date of Operation | 4 |
| Supersession and Savings | 5 |
| Parties and Persons Bound | 6 |
| Definitions | 7 |
| Wage Rates | 8 |
| Annual Leave | 9 |
| Bereavement Leave | 10 |
| Breakages | 11 |
| Carer's Leave | 12 |
| Casual Employees | 13 |
| Contract of Employment | 14 |
| Deduction of Union Subscriptions | 15 |
| Enterprise Flexibility | 16 |
| Holidays with Pay | 17 |
| Hours of Duty | 18 |
| Meal Allowance | 19 |
| Meal and Rest Period | 20 |
| Occupational Superannuation | 21 |
| Overtime | 22 |
| Parental Leave | 23 |
| Part A - Maternity Leave | |
| Part B - Paternity Leave | |
| Part C - Adoption Leave | |
| Part D - Part-Time Work | |
| Part-Time Employees | 24 |
| Payment of Wages | 25 |
| Reference of Disputes | 26 |
| Saturday, Sunday and Holiday Work | 27 |
| Sick Leave | 28 |
| Time and Wages Record | 29 |
| Tools of Trade | 30 |
| Uniforms | 31 |

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2005.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Medical Practitioners (Private Sector) Award No. 1 of 2004 (Consolidated).

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are 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 employed in the industry specified in Clause 2 - Scope.
 - (ii) the Australian Nursing Federation Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope; and
 - (iii) the Health Services Union of Australia, Tasmania No. 1 Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

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7. DEFINITIONS

For the purposes of this award:

'Casual employee' means one engaged and paid as such, but whose term of engagement shall not exceed five days at any one time.

'Clerk' means an adult employee who is engaged to perform duties which are of a strictly clerical nature and do not come within the scope of classifications 'Registered Nurse', 'Surgery Attendant' and 'Secretary'.

'Medical Scientist' means a person employed as such who holds qualifications acceptable for corporate membership of the Australian Institute of Medical Technologists, and who is engaged on professional medical technology duties.

'Part-time employee' is:

- (a) an employee who is engaged for less than 20 hours per week, or
- (b) an employee who is engaged as such by the week and paid to work 20 hours or more per week but not exceeding 40 hours per week.

'Radiographer' means a person employed as such who holds the Diploma of Membership of the Australian Institute of Radiography, or its equivalent and has been engaged on full-time duties as a radiographer trainee for a minimum of three years under the direction of a qualified radiographer or a full time radiologist.

'Registered Auxiliary Nurse, one year trained and two year trained' means an employee appointed as such and who is registered under the provisions of the *Tasmanian Auxiliary Nursing Act, 1949*.

'Registered Nurse' means a nurse who is registered with the Nurses Registration Board and is the holder of a current general nursing certificate.

'Secretary' means an adult employee who has had not less than two years' experience in a doctor's surgery and whose duties include the forwarding of accounts, banking of moneys and who is in charge of the book-keeping system.

'Senior Technical Assistant - Laboratory' means a person employed as such who carries out routine laboratory tests either under indirect supervision or for the majority of his/her employment.

'Service' means service in a doctor's surgery within the employee of one employer or of several.

'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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'Surgery Attendant' means an adult employee (other than a registered nurse) who performs the duties of a receptionist and/or the keeping of the appointment book, clerical work associated with the forwarding of accounts, the receipt and banking of moneys and attending to patients and other general duties in a doctor's surgery.

'Technical Assistant - Laboratory' means a person employed as such in a pathology laboratory who in addition to assisting in laboratory procedures carries out routine laboratory tests under supervision.

8. WAGE RATES

1. WAGES

Employees of a classification mentioned herein shall be paid a weekly wage rate not less than the amount assigned to that classification.

SUBDIVISION A - REGISTERED NURSING STAFF

| | Base Rate | Safety Net Adjustment | Weekly Wage Rate (40 hours) |
|------------------------------------|--------------|--------------------------|-----------------------------------|
| | \$ | \$ | \$ |
| (a) Registered Nurse | | | |
| 1st year of service | 384.20 | 159.00 | 543.20 |
| 2nd year of service | 397.10 | 159.00 | 556.10 |
| 3rd year of service | 402.10 | 159.00 | 561.10 |
| 4th year of service | 413.90 | 159.00 | 572.90 |
| 5th year of service and thereafter | 426.60 | 161.00 | 587.60 |
| (b) Registered Auxiliary Nurse | | | |
| One Year Trained - | | | |
| 1st and 2nd year of service | 361.40 | 159.00 | 520.40 |
| 3rd year of service and thereafter | 367.30 | 159.00 | 526.30 |
| Two Year Trained - | | | |
| 1st and 2nd year of service | 367.30 | 159.00 | 526.30 |
| 3rd year of service and thereafter | 373.80 | 159.00 | 532.80 |

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SUBDIVISION B - ANCILLARY AND CLERICAL STAFF

| | Base Rate | Safety Net Adjustment | Weekly Wage Rate (40 hours) |
|--|--------------|--------------------------|-------------------------------------|
| | \$ | \$ | \$ |
| (a) Surgery Attendant | | | |
| 1st year of service | 330.30 | 159.00 | 489.30 |
| 2nd year of service | 353.80 | 159.00 | 512.80 |
| 3rd year of service | 371.10 | 159.00 | 530.10 |
| 4th year of service and thereafter | 392.40 | 159.00 | 551.40 |
| (b) Secretary | | | |
| 1st year of service | 353.80 | 159.00 | 512.80 |
| 2nd year of service | 371.10 | 159.00 | 530.10 |
| 3rd year of service and thereafter | 392.40 | 159.00 | 551.40 |
| (c) Cleaners | 328.00 | 159.00 | 487.00 |
| (d) Clerk | | | |
| 1st year's adult experience | 325.40 | 159.00 | 484.40 |
| 2nd year's adult experience and thereafter | 344.80 | 159.00 | 503.80 |
| | Base Rate | Safety Net Adjustment | Weekly Wage Rate (37.5 hours) |
| | \$ | \$ | \$ |
| (e) Radiographer | | | |
| 1st year of service | 423.90 | 161.00 | 584.90 |
| 2nd year of service | 439.20 | 161.00 | 600.20 |
| 3rd year of service | 455.60 | 161.00 | 616.60 |
| 4th year of service | 472.10 | 159.00 | 631.10 |
| 5th year of service and thereafter | 488.70 | 159.00 | 647.70 |
| (f) Medical Scientist | | | |
| 1st year of service | 432.80 | 161.00 | 593.80 |
| 2nd year of service | 443.30 | 161.00 | 604.30 |
| 3rd year of service | 459.70 | 161.00 | 620.70 |
| 4th year of service | 486.00 | 159.00 | 645.00 |
| 5th year of service | 515.30 | 159.00 | 674.30 |
| 6th year of service | 550.90 | 159.00 | 709.90 |
| 7th year of service | 586.70 | 159.00 | 745.70 |
| 8th year of service | 611.90 | 159.00 | 770.90 |
| 9th year of service and thereafter | 632.30 | 157.00 | 789.30 |

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| | Base Rate | Safety Net Adjustment | Weekly Wage Rate (40 hours) |
|--|--------------|--------------------------|-----------------------------------|
| | \$ | \$ | \$ |
| (g) Technical Assistant - Laboratory | | | |
| 1st year of service | 359.20 | 159.00 | 518.20 |
| 2nd year of service | 362.60 | 159.00 | 521.60 |
| 3rd year of service | 366.00 | 159.00 | 525.00 |
| 4th year of service and thereafter | 368.80 | 159.00 | 527.80 |
| (h) Senior Technical Assistant - Laboratory | | | |
| 1st year of service | 373.80 | 159.00 | 532.80 |
| 2nd year of service | 387.60 | 159.00 | 546.60 |
| 3rd year of service | 396.50 | 159.00 | 555.50 |
| 4th year of service and thereafter | 405.30 | 159.00 | 564.30 |
| (i) Clerk/Driver | 344.90 | 159.00 | 503.90 |

PROVIDED that when determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in which awards of the Tasmanian Industrial Commission relating to private industry employees are established, experience obtained after reaching the age of 18 years shall be counted as adult experience.

2. JUNIORS

The minimum weekly wage rate to be paid to junior employees shall be the undermentioned percentages of the weekly wage rate prescribed for a Surgery Attendant, 1st year of service, classification (a), Subdivision B - Ancillary and Clerical Staff of this clause:

| | % |
|-----------------------|----|
| Under 17 years of age | 50 |
| 17 years of age | 60 |
| 18 years of age | 70 |
| 19 years of age | 80 |
| 20 years of age | 90 |

PROVIDED that when determining the amount payable to an employee attaining the age of 21 years, who has been employed under this award as a junior, experience obtained after reaching the age of 18 years shall be counted as adult experience.

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3. ALLOWANCES

- (a) Typing and/or Stenography - Any employee classified under items (i) and (ii), Subdivision A - Registered Nursing Staff or (iii) and (iv), Subdivision B - Ancillary and Clerical Staff of subclause 1 - Wages of this clause, who performs the duties of a typist, and who holds a certificate of proficiency from a registered business college, or who attains a standard of proficiency which will enable the employee to process medical reports and documents to the satisfaction of the employer shall be paid an additional amount of \$6.60 per week.

PROVIDED that an employee who, without aid, serves more than one part-time doctor, an additional amount of \$5.30 per week shall be paid, provided that an employee serving more than one full-time doctor shall be paid an additional amount of \$9.10 per week.

- (b) A registered nurse required to make use of additional certificates shall, whilst employed by a doctor practising in that field, be paid an additional amount of \$9.40 per week.
- (c) The payments prescribed in this clause shall be made in a manner so that they do not exceed the amount of \$23.00 per week in the aggregate.

4. SUPPORTED WAGE SYSTEM

- (a) Eligibility Criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) 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 Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

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(b) For the purposes of this subclause:

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

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

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

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

(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 \$61 per week.

(d) Assessment of Capacity

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

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- (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.
 - (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 four weeks) may be needed.

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- (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 \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

5. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by subclause 4 - Supported Wage System is \$484.40 per week.

PROVIDED that employees classified as Clerk, first and second year of service shall continue to be paid the rate prescribed for the classification in Clause 8 – Wage Rates, subclause 1 – Wages, subdivision B – Ancillary and Clerical Staff, paragraph (d) hereof until 18 June 2004.

- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in paragraph (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in paragraph (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

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

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2005 State Wage Case Decision (T12144 of 2005) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

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

PROVIDED that, by mutual agreement between the employer and the employee, leave may be taken in any combination providing one period is at least 14 consecutive days (i.e., 10 working days).

(b) Payment for Period of Leave

- (i) All employees before going on annual leave other than casual or part-time employees working less than 20 hours per week who attract a 20 per cent loading in lieu of annual leave, sick leave and public holidays as mentioned in Clause 13 - Casual Employees, and Clause 24(b) - Part-Time Employees, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.

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- (ii) In addition thereto, all employees other than part-time employees in receipt of a 20 per cent loading in lieu of public holidays, annual leave and sick leave, shall be paid an amount equivalent to 17.5 per cent of his/her normal salary, or projected shift roster whichever is the greater, plus, where applicable, any higher duty allowance or all purpose payment payable to the employee concerned.

(c) Proportionate Leave on Termination of Service

A weekly employee who lawfully leaves the employment or who is dismissed, except for misconduct or neglect of duty, shall be paid 13 1/3 hours for each completed month of continuous service.

(d) Single Day Annual Leave

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

10. BEREAVEMENT LEAVE

An employee shall on the death of a member of the employee's immediate family, or a member of the employee's household be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

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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 that no such payment shall be made in respect of an employee's rostered days off.

PROVIDED FURTHER that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

The term '**immediate family**' includes:

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

11. BREAKAGES

Except in cases of proved carelessness, an employee shall not be required to pay for any breakages occurring in the ordinary course of the employees specified duties.

12. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) An employee, other than a casual employee, is entitled to use, in accordance with this subclause, up to a maximum of five days per annum of any current or accrued sick leave entitlement, provided for at Clause 28 - Sick Leave, of the award, for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

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

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- (2) a member of the employee's household.

The term '**immediate family**' includes:

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

(b) Unpaid Carer's Leave

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

(c) Grievance Process

Clause 26 - Reference of Disputes of this award applies to a dispute about the effect or operation of this clause.

13. CASUAL EMPLOYEES

- (a) The minimum rates that may be paid to casual employees shall be one-fortieth of the weekly rate mentioned in subclause 1 - Wages of Clause 8 - Wage Rates hereof, and in addition thereto 20 per cent.
- (b) Unless otherwise mutually arranged to the contrary, a casual employee other than a cleaner, shall be paid as for a minimum of four hours work on any one day.

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14. CONTRACT OF EMPLOYMENT

With the exception of employees engaged as specified in Clause 13 - Casual Employees, all employment shall be by the week and the employment of an employee will not be terminated except for misconduct or neglect of duty which would justify instant dismissal without at least one week's notice being given by the employer to the employee and the employee shall likewise give to the employer one week's notice of the employees intention to terminate the employees employment. If one week's notice be not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be.

An employee shall be entitled to receive on request a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service and shall become the absolute property of the employee. Any prospective or future employer shall return the reference to the employee within seven days of having received it.

An employer shall not, in exercising the employers powers of termination in this clause, make any distinction, exclusion or preference on the basis of sex, other than a distinction, exclusion or preference based on the inherent requirements of a particular job.

15. DEDUCTION OF UNION SUBSCRIPTIONS

The employer may on receipt of an authority from the employee deduct union subscriptions quarterly in advance from the wages of that employee and forward the amount deducted to the office of the appropriate registered employee organisation.

16. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
 - (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union or unions shall not unreasonably oppose any agreement.

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- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:
 - (i) The term of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

17. HOLIDAYS WITH PAY

- (a) All employees (other than casuals and intermittent employees and part-time employees mentioned in Clause 24 - Part-Time Employees, subclause (b) 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 in Clause 7- Definitions), 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, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) Subject to agreement being reached between the employer and the employee(s) concerned, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate.

PROVIDED that at all times the employee shall have the right to consult with his/her appropriate union before entering into such an agreement.

PROVIDED FURTHER that for the purpose of this clause each days holiday with pay shall stand alone.

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18. HOURS OF DUTY

- (a) Except where otherwise mutually agreed the ordinary hours of duty shall not exceed 40 per week within a spread of nine hours per day to be worked as follows:

Between the hours of 8.30am and 8.30pm, Monday to Friday inclusive.

- (b) Evening Shift Allowance

When normal hours of duty are altered, so that an employee finishes work after 6.00pm, an additional rate of 15 per cent shall be paid for those days.

- (c) Make Up Time

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

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

- (d) Rostered Days Off

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

- (i) An employee may elect, with the consent of the employer, to take a RDO at any time.

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- (ii) An employee may elect, with the consent of the employer, to take RDOs in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all RDOs for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee to the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record RDO arrangements in the time and wages book at each time this provision is used.

19. MEAL ALLOWANCE

Where an employee is called upon to work more than one and one-half hours after the usual time for finishing work the sum of \$13.10 shall be paid for a meal in addition to overtime rates.

20. MEAL AND REST PERIOD

- (a) A period of one full hour for lunch shall be taken between the hours of 12 noon and 2.00pm.
- (b) 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 the midday meal break and the cessation of work for the day. Each rest period shall be of 10 minutes duration.

21. OCCUPATIONAL SUPERANNUATION

- (a) Contributions
 - (i) The employer shall make an occupational superannuation contribution equivalent to 3 per cent of ordinary time earnings into the funds known as TASPLAN or HESTA or any other approved fund where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees as from 15 September 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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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.

- (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 paragraph (a)(i) of this clause paid into the fund known as CIS Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

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

'Eligible employee' means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer. Where an eligible employee has completed at least three months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

'HESTA' means the Health Employees Superannuation Trust Australia established by Trust Deed on 30 July 1987.

'Ordinary time earnings' shall include an employee's classification rate, overaward payment, 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 expense.

'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987.

(c) Exemptions

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

- (i) Where the fund subject to the exemption application is an approved fund which was established prior to 1 January 1990 and occupational superannuation contributions equivalent to 3 per cent of ordinary time earnings were being 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

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- (ii) Where an employer can demonstrate special and compelling circumstances to justify the use of an approved fund other than TASPLAN or HESTA.
- (iii) The following employers are exempt from contributing to TASPLAN or HESTA, but shall observe all other provisions of this clause and shall make the contributions in accordance with subclause (a) to the following approved fund:

| Employer | Fund |
|----------------------------|-------------------------------|
| Stable Investments Pty Ltd | Legal and General Superchoice |

(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 1 November 1990 hearing and determination.

Such application shall contain the following information:

- (1) Name of fund into which the funds are to be paid.
 - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
 - (3) Summary of structure and benefits.
 - (4) Level of administration charge.
 - (5) 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 15 September 1990 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 15 September 1990.

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22. OVERTIME

- (a) For all time of duty before the usual time for commencing work or after the usual time for ceasing work or for work performed outside the ordinary hours of duty, payment shall be made at the rate of time and a half for the first two hours and double time thereafter.
- (b) Overtime shall not be payable unless the period of time worked in excess of the ordinary hours exceeds 15 minutes on any day and the overtime is worked on the orders of the employer or the employers representative.
- (c) Time Off In Lieu of Payment

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

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

23. 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.

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(b) Definitions

For the purpose of this part:

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

'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.

'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.

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

(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;

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- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

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

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

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- (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 four 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.

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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 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.

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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:

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

'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.

'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).

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

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

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

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

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(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:

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

'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.

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

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

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

'Spouse' includes a de facto spouse.

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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:

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

- (i) any period of leave taken in accordance with this clause;

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- (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.

'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.

'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.

'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.

'Spouse' includes a de facto spouse.

(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 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.

24. PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work 20 or more hours per week shall be entitled to the annual leave, holidays and sick leave as prescribed in Clause 9 - Annual Leave, Clause 17 - Holidays with Pay, and Clause 28 - Sick Leave, provided that payment therefor shall be made at the rate normally paid to such employee for a similar period of time worked.

The wage rates payable per hour shall be one-fortieth of the relevant rate above set out.

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- (b) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one-fortieth of the relevant rate set out, plus an additional 20 per cent, such payment being in lieu of public holidays, annual leave, and sick leave.
- (c) Penalty provisions - penalty rates prescribed in Clause 27 - Saturday, Sunday and Holiday Work herein are applicable to part-time employees.

25. PAYMENT OF WAGES

- (a) Wages shall be paid during working hours and not later than Thursday of each week or at such other times as may be mutually agreed upon between the employer and the employee.

PROVIDED that subject to agreement being reached between the employer and the majority of employees concerned, wages may be paid by Electronic Funds Transfer no later than Thursday each week and/or each fortnight. If Electronic Funds Transfer is agreed to, wages shall be deposited into an account nominated by the employee and the employee shall pay all costs associated with the transfer and one withdrawal per pay period.

- (b) On, or prior to pay day, if requested by the employee in writing, the employer shall state to the employee, the amount of wages to which he/she is entitled, the amount of tax deductions made therefrom, the amount of any other deductions made therefrom, and the net amount being paid to the employee.

26. REFERENCE OF DISPUTES

Any dispute arising in respect of any matter to which this award relates shall be referred to the Tasmanian Industrial Commission for adjudication.

27. SATURDAY, SUNDAY AND HOLIDAY WORK

- (a) For all time of duty on a Saturday payment shall be made at the rate of time and one half for the first three hours and double time thereafter. Provided that all time of duty after noon on a Saturday shall be paid at the rate of double time.
- (b) For all time of duty on a Sunday, payment shall be made at the rate of double time with a minimum payment as for four hours worked.
- (c) For all time of duty on any of the holidays mentioned in Clause 17 - Holidays with Pay of this award, payment shall be made at the rate of double time and one-half with a minimum payment as for four hours worked.

PROVIDED that the requirement to pay minimum payments for overtime Sundays and Public Holidays shall not apply in pathology laboratories where alternative methods of payment agreed between the employer, employees and appropriate union exists.

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PROVIDED FURTHER that where agreement is reached between the employer and the employee(s) concerned, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate and for the purpose of this clause each day (Saturday, Sunday and Holiday Work) shall stand alone.

PROVIDED ALWAYS that at all times the employee shall have the right to consult with his/her appropriate union before entering into such an agreement.

28. SICK LEAVE

(a) An employee, other than one engaged as a casual or intermittent employee or a part-time employee mentioned in Clause 24 - Part-time Employees, subclause (b) hereof, 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) he/she shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
- (ii) he/she shall, within 48 hours of the commencement of such absence, inform the employer of his/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) he/she shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
- (iv) he/she shall not be entitled in any year to sick leave in excess of 80 hours of ordinary working time.

PROVIDED that during the first three months of employment, sick leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer.

- (v) For the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

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

29. TIME AND WAGES RECORD

Each employer shall keep a time record showing the name of each employee, the number of hours worked, when such hours are worked, the rates of pay, and the wages paid each week.

30. TOOLS OF TRADE

Employers shall provide for the use of employees all necessary appliances for surgical and clerical duties including writing materials and pens.

31. UNIFORMS

- (a) Sufficient and serviceable uniforms shall be provided free of cost to all employees required to wear uniforms, or if the employee provides his/her own uniforms he/she shall be paid an allowance of \$2.80 per week. Uniforms shall be laundered at the expense of the employer or an allowance of \$2.90 per week paid to the employee.
- (b) An employee, who has been supplied with a uniform by the employer shall, on leaving the service of the employer, return any uniform or part thereof which is still in use by him/her immediately prior to him/her leaving the employment.
- (c) From 1 January 1979 all employees shall be notified in writing as to whether or not they are required to wear uniforms. All employees engaged after that date shall be so advised on engagement.

Tim Abey
COMMISSIONER

25 July 2005