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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.435 of 1986

IN THE MATTER OF AN APPLICATION BY THE TASMANIAN TRADES AND LABOR COUNCIL **TO VARY ALL PUBLIC AND PRIVATE SECTOR AWARDS AND AGREEMENTS RESPECTIVELY**

RE: NATIONAL WAGE 2.3% INCREASE IN SALARIES, WAGES AND ALLOWANCES

incorporating

T.300 of 1986

IN THE MATTER OF AN APPLICATION BY THE TASMANIAN CHAMBER OF INDUSTRIES RE **VARIATION OF PRIVATE SECTOR AWARDS**

RE: CONVERSION OF BASIC WAGE AND MARGIN TO TOTAL WAGE

ORDER -

No. 1 of 1986
(Consolidated)

AMEND THE **HORTICULTURISTS AWARD** BY DELETING ALL CLAUSES CONTAINED IN PARTS I AND II AND INSERT IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

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

2. SCOPE

Established in respect of the industry of -

(a) fruitgrower;
(b) vegetable grower;
(c) seed farmer;
(d) nurseryman; and/or
(e) packer of fresh fruit
(f) landscape gardener; and
(g) cultivator or layer of instant turf or lawn.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation as from the beginning of the first full pay period commencing on or after 1 July, 1986.

Provided that, it is a term of this award that the unions undertake that they will not pursue any extra claims, award or overaward, except where consistent with the Principles of Wage Fixation of the Tasmanian Industrial Commission.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 2 of 1983 (Conditions), No. 1 of 1984 (Conditions), No. 2 of 1984 (Conditions), No. 3 of 1984 (Conditions), No. 4 of 1984 (Conditions), No. 1 of 1985 (Conditions), No. 2 of 1985 (Wage Rates), No. 2 of 1985 (Conditions).

Provided further, 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;

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(c) the Australian Workers' Union (Tasmania Branch) and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(d) the Hop Producers' Association of Tasmania and the Officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope;

(e) the Tasmanian Farmers and Graziers Employers' Association and the Officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope;

(f) the Transport Workers' Union of Australia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(g) the Tasmanian Chamber of Industries; and

(h) the Tasmanian Trades and Labor Council

7. DEFINITIONS

(a) **'Harvesting Period'** shall mean that period of time during which not fewer than one half of the employees of the particular employer are engaged principally on the harvesting of fruit and shall apply to the harvesting of all fruits including citrus fruits.

(b) **'Horticultural Tradesman'** means a qualified nurseryman, and/or landscape gardener, and/or propagator, and/or greenkeeper who has successfully completed a recognised apprenticeship of not less than four years in a branch or branches of the horticulture trade;

who has a Certificate in Horticulture with not less than four years experience in a recognised area of the horticulture trade and who produces proof of such qualifications;

or

a person who has achieved a comparable standard of knowledge and competency and who has been accepted as a horticultural tradesman by the employer.

(c) **'Show Day'** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or 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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8. WAGE RATES

1. FRUITGROWER

Adult employees of a classification hereunder mentioned shall be paid the wage rate opposite that classification.

		Amount Per Week $
(a)	Orchard hand, experienced, i.e. an employee who, without direct supervision, carries out any duties required of him in connection with the growing of fruit	246.30
(b)	Orchard hand, general, having less than one month's continuous service with his present employer	241.90
(c)	Fruit Packer	241.90
(d)	Leading hand, i.e. an employee who directs and supervises the work of -	

2 to 6 employees -	$ 9.90
7 to 10 employees -	$10.60
11 to 19 employees -	$16.40
20 or more employees -	$21.60

(e) Junior Employees - other than apprentices

The minimum rates of wages that may be paid to junior employees shall be the undermentioned percentages of the adult rate for the classification upon which they are employed

	Percentage of Adult Wage %
under 16 years of age	45
16 to 17 years of age	50
17 to 18 years of age	60
18 years of age and over	100

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2. VEGETABLE GROWER, SEED FARMER AND/OR NURSERYMAN

Adult employees of a classification hereunder mentioned shall be paid the wage rate opposite that classification.

		Amount Per Week $
(a)	Propagator	254.70
(b)	Farm hand, experienced, i.e. an employee who without direct supervision, carries out any duties required of him in connection with the growing of vegetables, seeds and/or plants	246.30
(c)	Farm hand, general, having less than one month's continuous service with his present employer	241.90

(d) Leading hand, i.e. an employee who directs and supervises the work of -

2 to 6 employees -	$ 9.90 per week extra
7 to 10 employees -	$10.60 per week extra
11 to 19 employees -	$16.40 per week extra
20 or more employees -	$21.60 per week extra

(e) Junior Employees - other than apprentices

The minimum rates of wages that may be paid to junior employees shall be the undermentioned percentages of the adult rate for the classification upon which they are employed

	Percentage of Adult Wage %
Under 16 years of age	45
16 to 17 years of age	50
17 to 18 years of age	60
18 years of age and over	100

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3. HORTICULTURAL TRADESMAN

Adult employees of a classification hereunder mentioned shall be paid the wage rate opposite that classification.

		Amount Per Week $
(a)	Horticultural Tradesman (as defined)	305.00

(b) Apprentices -

the minimum rates of wages that may be paid to apprentices shall be the undermentioned percentages of the total wage payable to classification (a), Horticultural Tradesman of this subclause.

		AMOUNT $
1st year	42	128.10
2nd year	55	167.80
3rd year	75	228.80
4th year	88	268.40

4. GENERAL

Adult employees of a classification hereunder mentioned shall be paid the wage rate opposite that classification.

		Amount Per Week $
(a)	Fork Lift Driver	274.80
(b)	Motor Lorry Driver	274.80

5. MINIMUM WAGE

(a) Notwithstanding the provisions of subclauses 1, 2, 3 and 4 of this clause, no adult employee shall be paid less than the rate of $198.70 per week.

(b) Provided that payments for overtime, special rates, holiday and weekend penalties, prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates payments, sick leave and annual leave, and for all other purposes of this award.

6. PIECE-WORK

(a) The following are the minimum rates that may be paid as a piece-work rate for picking small fruits -

(i) Gooseberries - $8.31 per 45.4 kg weight.

(ii) Loganberries

(a) $17.37 per 45.4 kg weight in bulk.
(b) $20.60 per 45.4 kg weight in punnets.

(iii) Strawberries

(a) $20.99 per 45.4 kg weight in bulk.
(b) $22.12 per 45.4 kg weight in punnets.

(iv) Blackcurrants - $17.33 per 45.4 kg weight on stalks.

(v) Raspberries

(a) $18.66 per 45.4 kg in bulk.
(b) $22.12 per 45.4 kg in punnets.

(vi) Other small fruits -

(a) $18.66 per 45.4 kg weight in bulk.
(b) $22.12 per 45.4 kg weight in punnets.

(b) Piece-work rates for work other than that for which piece-work rates have been prescribed in (a) above may be fixed by the employer and the employee at such rates approved by the Australian Workers' Union as will enable the average employee working the ordinary hours prescribed herein to earn at least twelve and a half percent above the prescribed time rate. Such rates shall, when fixed, be paid in lieu of the said time rates.

9. AGED, SLOW AND INFIRM WORKERS

In accordance with the provisions of Section 79 of the Industrial Relations Act, 1984, the Secretary for Labour may grant to an aged, slow, or infirm worker a licence to work at a wage less than the wages prescribed by this award.

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10. ALLOWANCES

(a) Shift Allowance

All time worked outside of the hours prescribed in Clause 21 - Hours subclause (a) of this award shall have a shift loading of $1.33 for each hour worked.

The extra rates prescribed by this clause are payable only during the employees' ordinary working hours and are not cumulative on the penalty rates prescribed in Clause 28 - Overtime, of this award.

(b) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Apprentices Act 1942 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.10 per week.

Provided that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

(c) Motor Cycle and Bicycle Allowance

If the nature of the employment requires an employee, on the instructions of the employer, to use a motor cycle or bicycle in the course of his work, such motor cycle or bicycle being the property of the employee, he shall be paid accordingly $1.90 per day with fuel supplied for the motor cycle and 79 cents per day for the use of the bicycle.

11. AMENITIES

Employers shall provide for the use of their employees suitable washing facilities, change rooms, dining accommodation, and sanitary convenience (separate for the sexes where necessary).

Any dispute as to whether suitable amenities have been provided as aforesaid shall be referred to the Secretary for Labour whose decision shall be final.

12. 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).

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(b) Payment in Lieu Prohibited

Payment shall not be made or accepted in lieu of annual leave except as provided in subclause (c) of this clause.

(c) Proportionate Leave on Termination of Service

Where an employee lawfully leaves the employment or is dismissed (except for neglect of duty or misconduct) before the expiration of twelve months' service but on or after completing one month's service he or she shall be paid thirteen and one third hours for each completed month of continuous service.

(d) Payment for Period of Leave

(i) Each employee before going on leave shall be paid at the rate at which the employee was ordinarily employed immediately prior to the commencement of the leave or the termination of the employment as the case may be:

In addition thereto, all employees, other than casual employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, subclause 5 Minimum Wage, of this award.

(ii) Payment in the case of piece-work shall be at time rates.

(e) Annual Leave Exclusive of Public Holidays

(i) Where any holiday prescribed by Clause 20 - Holidays with Pay of this award, falls within the period of an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

(ii) Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

(f) Time of Taking Leave

(i) The annual leave provided by this clause shall be allowed and shall be taken within three months of such leave falling due.

(ii) When the right to annual leave has accrued the employer shall give not less than one week's notice to the employee concerned of his intention to grant such leave.

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(g) 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 continuous service.

13. CASUAL EMPLOYEES

Casual employees shall be paid 20 per cent in addition to the rates prescribed for weekly employees. This payment shall be in lieu of annual leave, sick leave, and public holidays prescribed herein. Casual employees shall be paid at an hourly rate determined by applying to the appropriate weekly rate plus 20 per cent, the divisor 40.

14. CASUAL EMPLOYEES DURING HARVESTING

Suitable camps, wood, and water shall be supplied free of cost to such casual employees as are camped on the employer's property during the course of fruit picking, and the camps so occupied shall be vacated within 48 hours of the time of cessation of employment. The camps shall be left in the same state of repair and cleanliness as when occupied.

15. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step-mother, step-father, grand-father, grand-mother, 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 purposes 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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16. ENGAGEMENT

Employees (other than casual employees) shall be deemed to be hired by the week, subject however to the following:

(a) an employee who absents himself from duty (public holidays as prescribed by Clause 20 - Holidays with Pay and sickness as prescribed by Clause 30 - Sick Leave of this award excepted) shall not be entitled to payment in respect of time of such absence;

(b) employment shall be terminated by one week's notice given by either party, which notice may be given at any time, provided that the termination shall take effect at the end of the day's work, or by payment or forfeiture (as the case may be) of one week's wages. Nothing in this subclause shall prevent an employer dismissing an employee for misconduct or neglect of duty in which case payment shall be made up to the time of dismissal only;

(c) no employer shall terminate an employee's engagement merely for the purpose of depriving an employee-of his or her right to payment for a public holiday specified in Clause 20 - Holidays with Pay of this award;

(d) no employer shall enter into any contract for the carrying on of any of the operations or functions to which this award applies by any contract unless the contract contains a clause binding the contractor to pay to employees the rates and observe the conditions set out in this award in respect of the work contracted for, and unless a clause is inserted in any such contract to the effect that the employer can terminate the contract if there is any breach of the conditions referred to.

The employer shall assume responsibility to the extent of any monies due by him to the contractor for payment of all wages due by the contractor to employees for such work.

17. EXISTING PRACTICES

(a) Nothing in this award shall be taken to reduce the wages of an employee who is at the date hereof in receipt of a wage in excess of that herein prescribed.

(b) Employees working in any branch of the industry where the ordinary hours of employment are less than 40 per week at the date hereof shall not have their ordinary hours increased as a result of this award.

18. FARES AND TRAVELLING

When an employee is required to work away from his usual place of employment and is required to commence work at the normal time the employee shall be paid for all time in excess of the time normally spent travelling to and from work.

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Where an employee is required to use his own vehicle to travel to work at a location in excess of the distance he would normally travel, he shall receive 24 cents per kilometre for each kilometre travelled, with a minimum payment of $4.45 per day.

19. FIRST AID EQUIPMENT

A suitable first-aid kit shall be kept at all places of work, and a qualified first-aid man (if available) shall be appointed to take charge of first-aid equipment and to attend to any person injured during working hours. Such first-aid man to be paid $1.30 per day in addition to his ordinary wages where there are more than 3 persons employed.

20. HOLIDAYS WITH PAY

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

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), the first Monday in November (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

By agreement between any employer and his employees, other days may be substituted for the said days or anyone of them.

(b) Payment for the holidays mentioned in subclause (a) of this clause 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) of this clause shall be at the rates prescribed elsewhere in this award.

(d) Employees who are employed on piece-work shall be paid a day's wages at time work rates for any of the aforementioned holidays when not required to work on any of such days or a day's wages at time work rates in addition to piece-work rates for work performed on any such day.

(e) If any of the holidays mentioned in subclause (a) of this clause fall on a day other than a usual working day another day shall be allowed in lieu thereof.

(f) Where consequent upon any visit to Australia by Her Majesty the Queen or any other member of the Royal Family a public holiday is proclaimed by the Governor-in-Council or otherwise gazetted by the Tasmanian Government under State Act throughout the State or part thereof and under the Tasmanian Industrial Commission such day shall within the defined locality be deemed to be a holiday for the purposes of this award.

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21. HOURS

(a) The ordinary hours of work for day workers shall be 40-hours per week to be worked in 5 days of not more than 8 hours each, Monday to Friday inclusive, continuously (except for meal breaks) between the hours of 6.00 a.m. and 6.00 p.m.

(b) The spread of hours or daily hours prescribed by subclause (a) of this clause may be, altered as to some or all employees by agreement between the employer and employee concerned.

(c) The hours worked outside of the hours prescribed by subclause (a) of this clause shall have a shift loading as prescribed in Clause 10 - Allowances, subclause (a) - Shift Allowance of this award for each hour worked.

The extra rate prescribed by this subclause is payable only during the employees ordinary working hours and not cumulative on penalty rates prescribed in Clause 28 - Overtime of this award.

22. LOSS OF CLOTHING DUE TO FIRE

The employer shall be responsible up to a maximum of $669.00 for an employee's clothing which may be destroyed by fire in a changing house or other shelter, provided that such destruction is not in any way caused by the employee's own act or neglect.

23. MATERNITY LEAVE

(a) Eligibility for Maternity Leave

An employee who becomes pregnant, shall upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(i) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(ii) Maternity leave shall mean unpaid maternity leave.

(b) Period of leave and commencement of leave

(i) Subject to subclauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from 6 to 52 weeks and shall include a period of 6 weeks compulsory leave to be taken immediately following confinement.

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(ii) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(iii) An employee shall give not less than 4 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.

(iv) 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 6 weeks immediately prior to her presumed date of confinement.

(v) 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 (iii) hereof, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a safe job

Where in the opinion of a duly qualified 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 duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g), (h), (i) and (j) hereof.

(d) Variation of period of maternity leave

(i) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, but the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of 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.

(e) Cancellation of maternity leave

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

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

(f) 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

(a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(b) 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 duly qualified 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 duly qualified 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 52 weeks.

(iii) For the purposes of subclauses (g), (h) and (i) 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 (c), to the position she held immediately before such transfer.

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 salary or wage to that of her former position.

(g) Maternity leave and other entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (c) and (f) hereof does not exceed 52 weeks:

(i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled.

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

(h) Effect of maternity leave on employment

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 an award.

(i) 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.

(j) Return to work after maternity leave

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

(ii) An employee, upon 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 (c) to the position which she held immediately before such transfer. 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 salary or wage to that of her former position.

(k) 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 under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, 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) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

24. MEAL INTERVAL AND ALLOWANCE

(a) A meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.

(b) An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of $4.80.

(c) An employee required to work through his customary meal break shall be paid at overtime rates until such time as the meal break is taken.

25. MIXED FUNCTIONS

An employee engaged for 2 hours or more 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 2 hours of one day he shall be paid the higher rate for the time so worked.

26. NOTICE BOARDS

Each employer shall permit a notice board of reasonable dimensions to be erected in a prominent position on his plant so that it will be reasonably accessible to employees working under this award. Accredited union representatives shall be permitted to put on the notice board union notices, signed or countersigned by the representatives posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

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27. NOTIFYING CASUAL EMPLOYEE HE IS NOT WANTED

If a casual employee is not informed before he leaves the job at the end of his day's work that he is not required to work on the next day and such employee attends for work and is not put to work on that day he shall be paid a minimum as for 4 hours. Provided that unless the unemployment is due to circumstances over which the employer has no control he shall be paid as for a full day's work.

28. OVERTIME

All hours worked in excess of 8 hours on any one day Monday to Friday inclusive shall be paid at the rate of time and one half for the first 2 hours and double time thereafter.

29. PAYMENT OF WAGES

(a) For weekly employees payment of wages shall be made at not longer than fortnightly intervals unless otherwise agreed to between an employer and his employee. An employee who is kept waiting for his pay longer than 15 minutes after the cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.

(b) For casuals and piece-workers (unless otherwise mutually arranged) payment shall be made not later than 2 hours after the cessation of work. An employee who is kept waiting for his pay longer than 2 hours after cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.

(c) The employer shall pay at any time, on the written signature of the employee, any obligatory contributions or donations out of the amount for the time being due to the employee.

30. PREFERENCE TO UNIONISTS

Preference of employment shall be given to financial members of The Australian Workers' Union or where non-unionists apply for employment to those who give an undertaking to join the union when approached to do so by an accredited union representative.

31. PROPORTION OF FEMALES TO JUVENILES IN FRUIT PICKING

(a) In fruit picking, females of less than 18 years of age and male juniors shall not, unless paid wages prescribed for adults, be employed in a greater proportion than one female and one male junior to each adult employed at the orchard either wholly or partly in fruit harvesting by the employer concerned.

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(b) This clause shall not apply to the employment of any females of less than 18 years of age or male juniors, being husband, wife, brother, sister, son or daughter of the employer concerned.

32. PROTECTIVE CLOTHING

(a) If an employee is required to work in a wet place or in heavy rain he shall be provided with wet weather gear and suitable head covering so as to protect him from getting wet.

(b) The employer shall supply to each employee after 3 months service 2 pairs of overalls or suitable alternatives and one pair of work boots in each year.

(c) The clothing shall remain the property of the employer and the current issue shall be returned to the employer on termination of employment or prior to the next issue.

33. RESOLUTION OF DISPUTES

Any industrial dispute arising during the currency of this award shall be dealt with as follows:

(a) the matter should first be discussed between the employee and his immediate supervisor. At the employee's option his delegate may also be present;

(b) if not settled, the matter shall be submitted by the shop steward or union representative to the industrial officer or other appropriate officer of the employer;

(c) if not settled, the matter shall be formally submitted by the State Secretary or other appropriate official of the union concerned to the employer;

(d) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the, award, the employer, and officials of the unions and their members, will take all possible action to settle any dispute within 7 days of notification of the dispute to the employer;

(e) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

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34. RIGHT OF ENTRY

(a) Reasonable facilities shall be afforded representatives of the Australian Workers' Union, as accredited hereafter, on production of his accreditation to the employer or such other person as may be appointed by the employer for that purpose, for investigating grievances of members, or for the purpose of interviewing employees on legitimate union business and without affecting the generality of the foregoing provision, each employer shall permit a representative of the organisation, to enter his premises during working hours for the purpose of interviewing employees. The representative shall not unduly interfere with the workings of the establishment.

(b) If such authorised, person exceeds the limits of his authority or fails to conduct himself properly, such authority may be terminated by the Secretary for Labour on the application of an employer showing good cause.

(c) That without the consent of the employer the representative shall not visit the premises more than once a week.

(d) A representative shall be duly accredited if he is the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the seal of the organization and bearing the signature of the holder. The certificate shall be in the following form or in a form not materially different.

NAME OF ORGANISATION

This is to certify that whose signature appears hereunder, is a duly accredited representative of the above named organisation for the purpose of the Horticulturist's Award.

……
Secretary

Seal

…….
Signature of Holder of
Certificate

This certificate is strictly not transferable.

(e) A job representative appointed by the employees or by the union shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting the employees he represents.

(f) Entry to an accredited representative for inspection of records required to be kept under Section 75 of the Industrial Relations Act 1984, under Section 77 of the Industrial Relations Act 1984 shall be allowed, on receipt by the employer of a written application, and shall take place during usual office hours at the employer's place of business.

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35. SATURDAY, SUNDAY AND PUBLIC HOLIDAY WORK

(a) All work performed on a Saturday shall be paid for at the rate of time and a half for the first 2 hours and double time thereafter.

(b) All work performed on a Sunday shall be paid for at the rate of double time.

(c) All work performed on a public holiday prescribed in Clause 20 - Holidays with Pay of this award, payment shall be made at the rate of time and one half plus a day in lieu.

Provided that all piece-workers, whether employed on a weekly basis or otherwise, required to work on a Saturday or Sunday shall be paid for all piece-work performed at ordinary piece-work rates in addition to the ordinary time work rate for the classification under which he is employed for the time so worked.

The employee shall be paid for all piece-work performed on any of the holidays prescribed in Clause 20 - Holidays with Pay of this award, at ordinary piece-work rates in addition to time and one half work rate for the classification under which he is employed for the time so worked.

36. SICK LEAVE

(a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:

(i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

(ii) he shall, within 48 hours of the commencement of such absence, inform the employer of his 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 shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour, that he 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 shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;

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(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 employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

(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 employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

37. SMOKO

All employees shall be allowed a paid period smoko of 10 minutes each morning and afternoon.

38. SPECIAL RATES

Employees who are engaged in praying, sowing, or spreading of fertiliser, handling of chemicals, or threshing or cleaning seeds indoors shall be provided by the employer with protective clothing (including where necessary, respirator and/or goggles) and be paid 39 cents per hour extra while so engaged with a minimum payment as for 4 hours on any one day.

Any dispute under this clause shall be referred to the Secretary for Labour, whose decision shall be final.

39. TOOLS AND EQUIPMENT

The employer shall provide all tools and equipment required for the proper performance of the work, and the employee on leaving shall return all tools and equipment to the employer during working hours.

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40. WET PAY

If an employee is required to work in a wet place or in heavy rain he shall be provided with gumboots or oilskins and/or suitable head covering so as to protect him from getting wet.

If he is not so provided so as to protect him from getting, wet he shall be paid therefore $3.00 per day extra for each day or part of a day on which he is not provided with waterproof clothing.

R J Watling
COMMISSIONER

19 August 1986