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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T12395 of 2005)
Private Sector Awards

FULL BENCH:
PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER J P McALPINE

Wage Rates – State Wage Case 2006 – application to vary private sector awards – Awards rates to be increased by $20 per week - Wage related allowances to be increased by 3.45% – Meal allowance increased to $13.60 - State Minimum Wage determined at $504.40 - s.35(1)(b)

HAIRDRESSING, HEALTH AND BEAUTY INDUSTRY AWARD

ORDER -

No. 2 of 2006
(Consolidated)

AMEND THE **HAIRDRESSING, HEALTH AND BEAUTY INDUSTRY AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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PART I – APPLICATION AND OPERATION OF THE AWARD

1. TITLE

This award shall be known as the "Hairdressing, Health and Beauty Industry Award".

2. INDEX

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3. SCOPE

(a) This award is established in respect of the industry of hairdressing and the industry of health and beauty.

(i) The hairdressing industry includes tasks prescribed under the National Hairdressing Training Package. The details of the training package are available from the Tasmanian Wholesale, Retail, Associated and Personal Services Industry Training Advisory Board Inc.

(ii) The health and beauty industry includes tasks prescribed under the National Beauty Training Package. The details of the training package are available from the Tasmanian Wholesale, Retail, Associated and Personal Services Industry Training Advisory Board Inc.

(b) This award shall not apply to the industry of health and fitness where the business of the employer is conducted in gymnasiums and fitness centres and health and/or weight control establishments.

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2006.

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5. AWARD INTEREST

(a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:

(i) Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch;

(ii) Shop, Distributive and Allied Employees' Association, Tasmanian Branch.

(b) The following employer organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:

(i) Hairdressing Federation of Tasmania;

(ii) The Retail Traders Association of Tasmania.

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

Tasmanian Chamber of Commerce and Industry Limited.

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

Tasmanian Trades and Labor Council.

6. SUPERSESSION

This award incorporates and supersedes the Hairdressing, Health and Beauty Industry Award No. 1 of 2005 (Consolidated) and No. 1 of 2006.

PART II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. DEFINITIONS

Employment Relationship

'Casual employee' means any person specifically engaged to work on an irregular basis, as and when required by mutual consent between employer and employee, but does not include any person employed on a part-time or full-time basis.

'Full-time employee' means an employee engaged to work 38 hours per week.

'Part-time employee' means a person who is engaged to work for less hours than those prescribed for full-time employees.

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2. EMPLOYMENT CATEGORIES

(a) Full-Time Employees

Full-time employees shall be engaged by the week.

(b) Part-Time Employment

(i) Part-time employees engaged to work 20 or more hours per week shall be paid per hour 1/38th of the relevant weekly rate and shall be entitled to annual leave, personal leave and the holidays with pay as prescribed in this award.

PROVIDED that the payment for annual leave, personal leave and holidays shall be made at the rate normally paid to such employee for a similar period of time worked.

(ii) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one thirty-eighth of the relevant rate plus an additional 20%, such payment in lieu of annual leave, personal leave and holidays with pay as prescribed in this award.

(c) Casual

(i) A casual employee for working ordinary time shall be paid per hour 1/38th of the relevant weekly rate plus an additional 20%, such payment in lieu of annual leave, personal leave and holidays with pay as prescribed in this award prescribed for a full-time employee engaged at the appropriate classification level.

(ii) The following conditions of employment are applicable to casual employees:

Penalty Rates prescribed in Part V - Holidays with Pay and Leave; Part IV – Hours of Work, Penalty Payments and Overtime; Saturday Work, Sunday Work are applicable to casual employees, in accordance with Part IV – Hours of Work, Penalty Payments and Overtime.

(d) Probationary Employees

(i) Nothing in this award shall be construed as making probationary employment mandatory.

(ii) Probationary employment shall not apply in respect of casual employees.

(iii) An employee may be engaged as a probationary employee during an initial probationary period of not more than 12 weeks. The probation period shall be specified in the contract of employment.

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(iv) The employer will provide the probationary employee with feedback about their work performance. Where areas of unsatisfactory performance are identified, the probationary employee will be made aware of the standards of satisfactory performance required and the dates by which they are required to be achieved.

(v) The employer shall complete a probationary review before the end of the probationary period specified in the contract of employment and immediately inform the employee of the outcome of this review under the following terms:

(1) Where the employer has determined that the probationary employee has satisfactorily completed their probation, that their employment will continue; or

(2) Where the employer, as a consequence of the probationary reviews, has determined that the probationary employee has not satisfactorily met the employer's work performance requirements, the probationary employee shall be informed of the outcome of the final review and shall be given two weeks' notice of termination of employment or payment in lieu thereof.

(3) **PROVIDED** that should an employer fail to complete the required final probationary review within the time specified, the employee will be deemed to have successfully completed the probationary employment period, unless the failure to review occurs due to circumstances beyond the employer's control.

3. TERMS OF ENGAGEMENT AND TERMINATION

(a) General

(i) Upon commencing work with an employer, all employees shall be classified at a level as prescribed in the relevant division under Part III – Wages, Allowances and Related Matters of this award.

(ii) An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award **PROVIDED** that such duties are not designed to promote de-skilling.

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

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(b) Ready, Willing and Available for Work

Full-time employees shall be paid the weekly wage prescribed for a week of 38 hours for each week that the employee is ready, willing and available for work during the hours prescribed in this award. In addition the employee shall be paid such overtime or other penalty rates, if any, that may have occurred during the relevant period.

(c) Termination of Employment

(i) Other than for casual employees employment may be terminated only by the giving of one week's notice by either party or by the payment or forfeiture of one week's wages as the case may be.

(ii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for serious and wilful misconduct or neglect of duty.

PART III – WAGES, ALLOWANCES AND RELATED MATTERS

1. CLASSIFICATION DESCRIPTORS

(a) Hairdressing

For the purpose of Clause 2 – Wage Rates, subclause (a) Hairdressing, of this Part, the following classification standards are defined.

SALON ASSISTANT

This classification shall be used for an employee who is appointed to carry out the following tasks: shampooing, client service (other than any hairdressing tasks), cleaning and tidying work area (excluding heavy/industrial cleaning).

SALON CO-ORDINATOR

This classification shall be used for an employee who is appointed to carry out the following tasks: reception duties, client service (other than any hairdressing tasks), retail sales and as required salon assistant duties.

HAIRDRESSER LEVEL 1

This classification shall be used for an employee who has successfully completed Certificate 3 from the National Hairdressing Training Package or an equivalent qualification and who is not engaged under a training agreement.

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HAIRDRESSER LEVEL 2

This classification shall be used for an employee who has successfully completed Certificate 4 from the National Hairdressing Training Package or an equivalent qualification, and who has had at least 12 months' experience in the hairdressing industry since obtaining the qualification.

HAIRDRESSER LEVEL 3

This classification shall be used for an employee who has successfully completed a diploma in hairdressing from the National Hairdressing Training Package, **PROVIDED** that the employee utilises the qualification in the course of his or her duties.

(b) Health And Beauty

For the purpose of Clause 2 – Wage Rates, subclause (b) Health and Beauty, of this Part, the following classification standards are defined.

BEAUTY CONSULTANT

This classification shall be used for an employee who has successfully completed Certificate 2 course from the National Beauty Training Package or an equivalent qualification.

SALON CO-ORDINATOR

This classification shall be used for an employee who is appointed to carry out the following tasks: reception duties, client service (other than any health and beauty tasks), and retail sales.

BEAUTICIAN

This classification shall be used for an employee who has successfully completed Certificate 3 course from the National Beauty Training Package or an equivalent qualification.

BEAUTY THERAPIST LEVEL 1

This classification shall be used for an employee who has successfully completed Certificate 4 course from the National Beauty Training Package or an equivalent qualification.

BEAUTY THERAPIST LEVEL 2

This classification shall be used for an employee who has successfully completed a Diploma course from the National Beauty Training Package, or a qualification deemed equivalent, **PROVIDED** that the employee utilises the qualification in the course of his or her duties.

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2. WAGE RATES

(a) Hairdressing

(i) An employee shall be paid the weekly wage rate assigned to the job classification as set out below.

	Base Rate Relativity %	Base Rate $	Safety Net Adjustment $	Weekly Wage Rate $
Salon Assistant	85	354.60	179.00	533.60
Salon Co-ordinator	92	384.10	179.00	563.10
Hairdresser Level 1	100	417.20	181.00	598.20
Hairdresser Level 2	105	438.10	181.00	619.10
Hairdresser Level 3	110	458.90	181.00	639.90

(ii) Trainee Hairdresser

(1) A Trainee hairdresser is a person undergoing an apprenticeship under a training agreement in accordance with the requirements of the *Vocational Education and Training Act 1994*.

(2) A Trainee hairdresser will be paid a percentage of the weekly wage rate of a Hairdresser Level 1 prescribed under Clause 2 – Wage Rates, subclause (a) – Hairdressing, of this Part.

Period of Training	%
First Year	42
Second Year	55
Third Year	75
Fourth Year	90

(3) The weekly wage rates will be calculated to the nearest 10 cents.

(4) Equipment allowances prescribed in Clause 8 – Allowances, subclause (a) – Equipment Allowance, of this Part, shall be paid to Trainee Hairdressers where tools are not provided by the employer.

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(iii) Juniors

(1) Junior Salon Co-ordinators will be paid a percentage of the weekly wage rate for a Salon Co-ordinator prescribed in Clause 2 – Wage rates, subclause (a) – Hairdressing, of this Part, based on the age of the employee.

Age	%
Under 17 years of age	54
17 years of age	60
18 years of age	73
19 years of age	86
20 years of age	90

(2) Junior Salon Assistants will be paid a percentage of the weekly wage rate for a Salon Assistant prescribed in Clause 2 – Wage Rates, subclause (a) – Hairdressing, of this Part, based on the age of the employee.

Age	%
Under 17 years of age	54
17 years of age	60
18 years of age	73
19 years of age	86
20 years of age	90

(3) Wage rates will be calculated to the nearest 10 cents.

(b) Health and Beauty

(i) An employee shall be paid the weekly wage rate assigned to the job classification as set out below.

	Base Rate Relativity %	Base Rate $	Safety Net Adjustment $	Weekly Wage Rate $
Beauty Consultant	85	354.60	179.00	533.60
Salon Co-ordinator	92	384.10	179.00	563.10
Beautician	100	417.20	181.00	598.20
Beauty Therapist Level 1	105	438.10	181.00	619.10
Beauty Therapist Level 2	110	458.90	181.00	639.90

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(ii) Trainee Beauty Therapist

(1) A Trainee Beauty Therapist is a person undergoing an apprenticeship under a training agreement in accordance with the requirements of the *Vocational Education and Training Act 1994*.

(2) A Trainee Beauty Therapist will be paid a percentage of the weekly wage rate of a Beautician prescribed under Clause 2 – Wage Rates, subclause (b) – Health and Beauty, of this Part, according to the following schedule:

Period of Training	%
First year	42
Second year	55
Third year	75
Fourth year	90

(3) The weekly wage rates will be calculated to the nearest 10 cents.

(4) Equipment allowances prescribed in Clause 8 – Allowances, subclause (a) – Equipment Allowance, of this Part, shall be paid to Trainee Beauty Therapists where tools are not provided by the employer.

(5) The proportionate number of trainees that may be employed, the conditions of traineeship, shall be as prescribed by the Tasmanian State Training Authority.

(iii) Juniors

(1) Junior Salon Co-ordinators will be paid a percentage of the weekly wage rate for a Salon Co-ordinator prescribed in Clause 2 – Wage rates, subclause (b) – Health and Beauty, of this Part, based on the age of the employee.

Age	%
Under 17 years of age	54
17 years of age	60
18 years of age	73
19 years of age	86
20 years of age	90

(2) Wage rates will be calculated to the nearest 10 cents.

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3. 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 Part III – Wages, Allowances and Related Matters, Clause 4 - Supported Wage System, is $504.40 per week.

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

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

(c) How the Minimum Wage Applies to Juniors

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

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

(d) Application of Minimum Wage to Certain Employees

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

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(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 personal 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 2006 State Wage Case Decision (T.12395 of 2005) and all previous safety net and state wage case adjustments.

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 subclause (c) of this clause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this subclause:

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

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

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

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

(c) Supported Wage Rates

Employees to whom this subclause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

Assessed capacity (paragraph (d))	Percentage of prescribed award rate
10%	10
20%	20
30%	30
40%	40
50%	50
60%	60
70%	70
80%	80
90%	90

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

(d) Assessment of Capacity

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

(i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;

(ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgement of Assessment Instrument

(i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.

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(ii) All assessment instruments shall be agreed and signed by the parties to the assessment, **PROVIDED** that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within ten 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.

(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 (iv) and (v).

(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.

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(v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (iii) hereof.

5. PAYMENT OF WAGES

Wages shall be paid weekly during the employer's time not later than Thursday in each week by cash, cheque or direct deposit.

PROVIDED that where consultation with the employees affected has taken place, wages may be paid on a Friday.

PROVIDED FURTHER that where consultation with the employees affected has taken place, wages may be paid fortnightly.

6. SUPERANNUATION

The employer shall make a contribution in accordance with the provisions of the relevant Federal Superannuation Guarantee Legislation.

(a) Definitions

'Eligible Employee' shall mean an employee whether full-time, part-time or casual, who has had at least three months continuous service with an employer subject to this award.

PROVIDED that in the case an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this award.

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

'Ordinary Time Earnings' shall mean the rate of pay attaching to an employee's classification, together with any supplementary payments and over award payments. Such earnings shall exclude overtime and allowances in the nature of a reimbursement (such as meal allowance).

(b) Contributions

An employer shall make a contribution equivalent to the percentage required to comply with the Superannuation Guarantee Charge legislation as amended from time to time, into an approved fund in respect of all eligible employees.

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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.

(c) Casual Employees and Part-Time Employees

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

(d) Fund

Contributions determined in accordance with subclause (b) of this clause shall, subject to subclause (e) of this clause, be made into the following nominated approved fund of TASPLAN.

(e) Exemption

An employer seeking exemption shall, not later than (1) month after the commencement of operation of the new business:

(i) Pursuant to Section 23 of the Act make application to the Tasmanian Industrial Commission to vary the award.

(ii) Applications shall contain the following information:

(1) Name of Fund;

(2) Evidence of compliance with Commonwealth Operational Standards;

(3) Summary of Structure and Benefits.

Contributions shall continue to be made in accordance with this subclause into the approved funds set out below:

Reflections in Hair (Walkers Enterprises)	AMP Super Leader
Hairworld (Neveluk P/L)	Tas Chamber of Commerce and Industry Super Fund
Jay Tees Hair Design	AMP Super Leader
Madonna's Hair Design	Legal & General Fund
Maison Carol	AMP Super Leader
Glemby International	REST
L'Unico Haircutters	AMP Super Leader

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Compliments Salon	AMP Super Leader
Salamanca Style	AMP Super Leader

7. LIMITATION OF DUTIES

No person other than those in receipt of the rate of wage prescribed for the classification descriptors in this Part shall be required to perform or shall perform any part of the work normally performed by employees classified in this Part.

8. ALLOWANCES

(a) Equipment Allowance

(i) An employee engaged as a Hairdresser Level 1, Level 2 or Level 3 or an employee engaged as a Beautician Level 2 or a Beauty Therapist Level 3 or Level 4 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.30 per week.

(ii) The tool 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.

(iii) The employer shall be responsible for providing all electrical equipment.

(b) Meal Allowance

An employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid $13.60 meal money.

PROVIDED that this provision shall not apply in circumstances where the employee had been provided with notice on the previous day of the requirement to work overtime.

9. SAVINGS

Employees who at the time of this award taking effect are paid a wage rate in excess of the rate prescribed for the relevant classification in Clause 2 – Wage Rates, subclause (a) – Hairdressing and subclause (b) – Health and Beauty, of this Part, shall continue to receive the higher rate until such time as the relevant rate in the award is equal to or greater than their current wage rate.

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PART IV – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME

1. HOURS OF WORK

(a) The ordinary hours of work shall be an average of 38 per week to be worked in one of the following basis:

(i) five days of seven hours thirty-six minutes per day; or

(ii) a nineteen day month of eight hours per day followed by a rostered day off; or

(iii) eight hours per day on nine days and four hours on one day in each fortnight; or

(iv) four days of eight hours and one day of six hours each week; or

(v) eight hours per day with an accumulation of rostered days off up to a maximum of five.

(b) Method of Implementation

The method of implementation shall be determined and may be reviewed from time to time at each establishment, whereby the primary consideration shall be the efficient maximisation of the business of each establishment, but where practicable, consideration shall be given to providing a rostered day off as per subclause (d) of this clause.

(c) Spread of Hours

The ordinary hours shall be worked in five days of eight consecutive hours (excluding meal breaks) between the following hours:

Monday and Tuesday	7.00am and 6.00pm
Wednesday, Thursday and Friday (any 2 evenings)	7.00am and 9.30pm
Saturday	8.00am and 6.00pm

(d) Rostered Days Off

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

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

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(ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

(iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.

(iv) In circumstances where a Rostered Day off applies, this day may be substituted for another day.

PROVIDED that agreement is reached between the employer and employees.

PROVIDED FURTHER that such agreement will not be unreasonably withheld.

(1) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.

(2) An employer shall record Rostered Days Off arrangements in the time and wages book, as prescribed in Part VIII - Compliance, Clause 1 - Time and Wages Records, of this award each time this provision is used.

(e) 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 or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.

(iii) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.

(iv) An employer shall record make up time arrangements in the time and wages book, as prescribed in Part VIII - Compliance, Clause 1 - Time and Wages Records, of this award each time this provision is used.

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2. MEAL BREAKS AND REST PERIODS

(a) Meal Break

(i) Employees shall be entitled to an unpaid meal break of not less than 45 minutes nor more than 60 minutes, after no more than five continuous hours of work. Such meal break shall be taken at a mutually convenient time.

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

(b) Rest Periods

An employee shall be allowed two rest periods during each working day, these periods to be of ten minutes duration, the first to be taken between the hours of commencing work and the meal period prescribed in Clause 1 - Hours Of Work of this Part, and the other between the meal period previously mentioned and the time of ceasing work.

3. SATURDAY WORK AND EVENING WORK

(a) Ordinary Hours

(i) Employees shall be paid a loaded hourly rate for working their ordinary hours on the following days and between the following hours:

Days	Spread of Hours	Loading
Wednesday/Thursday/Friday evening (any two evenings)	6.00pm and 9.30pm	15%
Saturday	8.00am and 6.00pm	50%

(ii) For the purpose of determining the appropriate hourly rate for the loaded hourly rate purposes, the appropriate weekly rates shall be divided by thirty-eight.

(b) Overtime Evening Work

(i) Where the hours of an employee who works on any two evenings between Wednesday and Friday evening exceed eight hours, excluding the meal period, he/she shall be paid overtime rates prescribed under Clause 4 – Overtime, Sunday Work and Holiday Work, of this Part.

(ii) An employee may elect to take time off in lieu of the overtime payment in accordance with the provisions of Clause 4 – Overtime, Sunday Work and Holiday Work, subclause (b) - Time Off In Lieu of Payment, of this Part.

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(c) Overtime Saturday

(i) Where the hours of an employee who works on Saturday exceed 38 hours per week, excluding the meal period, he/she shall be paid overtime rates prescribed under Clause 4 – Overtime, Sunday Work and Holiday Work, of this Part.

(ii) An employee may elect to take time off in lieu of the overtime payment in accordance with the provisions of Clause 4 – Overtime, Sunday Work and Holiday Work, subclause (b) - Time Off In Lieu of Payment, of this Part.

4. OVERTIME, SUNDAY WORK AND HOLIDAY WORK

(a) Overtime

(i) For all work performed outside of the hours prescribed in Part IV - Hours of Work, Penalty Payments and Overtime, Clause 1 – Hours of Work, and Clause 3 - Saturday Work and Evening Work hereof, and subject to subclause (v) of this clause, payment shall be made at the rate of time and one half for the first three hours and double time thereafter.

(ii) An employee who is required or recalled to work overtime after a period of one hour from the time fixed for ceasing work, whether or not the employee has been notified before ceasing work, shall receive a minimum payment as for three hours overtime worked.

(iii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

(A) any risk to employee health and safety;

(B) the employee's personal circumstances including any family responsibilities;

(C) the needs of the workplace and enterprise;

(D) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

(E) any other relevant matter.

(iv) No trainee under the age of 18 years shall be required to work overtime unless he or she so desires.

(v) In computing overtime each day's work shall stand alone.

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(vi) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by thirty-eight.

(vii) For the purpose of determining overtime entitlements of an employee, any employee who works ten minutes or more past the time fixed for ceasing work shall be paid overtime rate for all time worked after the time fixed for ceasing work.

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

(b) Time Off In Lieu of Payment

Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime.

PROVIDED that such time off shall be paid at the ordinary rate.

PROVIDED FURTHER that 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.

(c) Sunday Work

For all time worked on a Sunday, payment shall be made at the rate of double time with a minimum payment of four hours.

(d) Holiday Work

For all time worked on any of the holidays mentioned in Part V – Holidays with Pay and Leave, Clause 1 – Holidays With Pay, payment shall be made at the rate of double time and one half with a minimum payment of four hours.

PART V – HOLIDAYS WITH PAY AND LEAVE

1. ANNUAL LEAVE

(a) Period of Leave

Full-time employees and part-time employees shall be entitled to a period of 152 hours (four weeks) paid annual leave annually after each 12 months of employment.

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(b) Broken Leave

Annual leave allowed shall be given and taken in one consecutive period, or if the employer and the employee agree, in one of the following methods:-

(i) In two separate periods, the lesser of which shall be not less than seven consecutive days, i.e. five working days.

(ii) In any combination, provided one period shall be not less than seven consecutive days, i.e. five working days.

(c) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Clause 1 - Holidays with Pay hereof, falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

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

(e) Time of Taking Leave

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

(f) Payment for Period of Leave

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

(ii) In addition all employees shall receive a loading of 17 1/2 per cent on payment made for annual leave as prescribed in paragraph (a) hereof. Such loading shall not apply to proportionate leave on termination of service.

(g) Leave Allowed Before Due Date

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

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(ii) Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 1 - Holidays with Pay of this Part.

(h) Proportionate Leave on Termination of Service

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

(1) Full-time employees - 12.67 hours for each completed month of continuous service (calculated by dividing annual leave entitlement of 152 hours by 12).
(2) Part-time employees – divide annual leave entitlement of 152 hours by the part-time employees ordinary weekly hours of work and then divide by 12.

(ii) For the purposes of this clause service shall be in respect of which leave has not been granted, providing that the provisions of this subclause shall not apply to probationary trainees for whom the qualifying period of service before entitlement shall be three months.

2. BEREAVEMENT LEAVE

(a) 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 three ordinary days, **PROVIDED** that no payment shall be made in respect of an employee's rostered days off.

(b) 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 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.

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(c) For the purpose of this clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

(d) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

(e) Casual employees and part-time employees engaged to work less than 20 hours per week in receipt of a loading in lieu of entitlements:

(i) Subject to the evidentiary requirements in subclause (a) and (b), casual employees and part-time employees engaged to work less than 20 hours per week in receipt of a loading in lieu of entitlements are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

(ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

(iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

3. HOLIDAYS WITH PAY

(a) Full-time employees and part-time employees who work 20 or more hours per week, shall be entitled to the following holidays without loss of pay: New Years Day, Australia Day, Hobart Regatta Day (South of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day (week day only), Queens Birthday, Show Day, Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

(b) Part-time employees shall be entitled to the holidays under (a) above where such holiday(s) fall on a part-time employee's normal working days.

(c) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the employee's normal rate of pay.

(d) **'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, making a total of up to 11 paid holidays per year.

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4. PARENTAL LEAVE

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

(a) Definitions

For the purposes of this clause:

(i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.

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

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

(2) any period of part-time employment worked in accordance with this clause; or

(3) any period of leave or absence authorised by the employer or by the award.

(iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.

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

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

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

(vii) **'Spouse'** includes a de facto or a former spouse.

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(b) Entitlement

(i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.

(ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

(1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

(2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

(i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

(1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;

(2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.

(ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.

(iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

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(v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(vi) Special Maternity Leave

(1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

(2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.

(3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

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

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

(d) Paternity Leave

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

(1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and

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(2) written notification of the proposed dates on which the period of paternity leave will start and finish and

(3) a statutory declaration stating:

(A) that period of paternity leave will be taken to become the primary care-giver of a child;

(B) particulars of any period of maternity leave sought or taken by the mother, and

(C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.

(4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

(i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

(1) the employee is seeking adoption leave to become the primary care-giver of the child;

(2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and

(3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

(iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

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(v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.

(vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

(1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

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

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

(iii) Pro Rata Entitlements

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

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(iv) Transitional Arrangements - Annual Leave

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

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

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

(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

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

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

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

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

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

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

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

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(vii) Termination of Employment

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

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

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

(1) limiting the number of employees who may work part-time;

(2) establishing quotas as to the ratio of part-time to full-time employees;

(3) prescribing a minimum or maximum number of hours a part-time employee may work; or

(4) requiring consultation with, consent of or monitoring by a union;

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

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(h) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.

(ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.

(iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.

(iv) Unbroken service as a replacement employee shall be treated as continuous service.

(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless other wise agreed between employee and employer, and consistent with the provisions of this clause

(i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, **PROVIDED** that the employer may require notice of not more than four weeks.

(iv) An employee shall be entitled to extend the period of parental leave on one occasion, **PROVIDED** that the employer may require notice of not more than four weeks.

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

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(j) Redundancy

(i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

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

(k) Right To Request Variation To Parental Leave Provision

(i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

(1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;

(2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;

(3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

(ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

(i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

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(ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i).

5. PERSONAL LEAVE

The provisions of this clause apply to an employee, other than one engaged as a casual, or part-time employees engaged to work less than 20 hours per week in receipt of a loading in lieu of entitlements as specified in Part II - Employment Relationship and Associated Matters, Clause 2 – Employment Categories, subclause (b)(ii), to paid leave. The entitlements of casual employees and part-time employees in receipt of a loading in lieu of an entitlement to paid leave are set out in subclause (j) - Casual Employees and part-time employees engaged to work less than 20 hours per week in receipt of a loading in lieu of entitlements – Caring Responsibilities.

(a) Definitions

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

(i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

(ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

Paid personal leave is available to an employee, when they are absent:

(i) due to personal illness or injury; or

(ii) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.

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(c) Entitlement

(i) Full-time employees and part-time employees who work 20 or more hours each week, who are absent from work on account of personal illness or on account of injury by accident shall be entitled in any year to leave of absence without deduction of pay of a maximum of 76 hours of ordinary working time.

(ii) During the first three months of employment, personal leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

(iii) For the purpose of administering subclause (c) of this clause, an employer 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 the employee has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

(d) Accumulation of Personal Leave

(i) Unused personal leave shall accumulate from year to year so that any balance of the period specified in subclause (c) of this clause which has in any year not been allowed to an employee as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employee in a subsequent year without diminution of the personal leave prescribed in respect of that year.

(ii) An employer shall not be required to make any payment in respect of accumulated personal 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.

(d) Conditions

The employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers compensation.

(e) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(f) Personal Leave to Care for an Immediate Family or Household Member

(i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

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Leave may be taken for part of a single day.

(ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (f)(i) above, beyond the limit set out in paragraph (f)(i) above. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(g) Employee Must Give Notice

The employee shall, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of his 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 absence.

(h) Evidence Supporting Claim

(i) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission),that the employee was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed.

(ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(i) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (g) and (h) are met.

(j) Casual Employees and part-time employees engaged to work less than 20 hours per week in receipt of a loading in lieu of entitlements – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (g) and (h) casual employees and part-time employees engaged to work less than 20 hours per week are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

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The employer and the employee shall agree on the period for which the casual employee and the part-time employees engaged to work less than 20 hours per week will be entitled to not be available to attend work. In the absence of agreement, the said employees are entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee or the part-time employees engaged to work less than 20 hours per week are not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

PART VI – DISPUTE RESOLUTION

1. RESOLUTION OF DISPUTES

In the event of any dispute or grievance between the employer and the employee/s, the following procedure shall be observed:

(a) The matter shall in the first instance be discussed at establishment level between the employer and the employee/s concerned.

(b) In the event that the matter remains unresolved, the officials of the relevant union may be involved. The employer may seek to involve the employer organisation.

(c) Should the matter remain unresolved it shall be referred to the Tasmanian Industrial Commission for resolution.

(d) The above procedure is to be followed without resort to industrial disputation and the parties will in examining any issue have regard to the spirit as well as the letter of the provisions of this award or any agreement or understandings previously reached.

PART VII – UNIFORMS AND PROTECTIVE CLOTHING

1. UNIFORMS AND PROTECTIVE CLOTHING

Where an employer requires an employee to wear protective clothing or distinctive dress or uniform, such uniform or protective clothing to be provided by the employer without cost to the employee.

Where an employee is required to wear rubber gloves in the course of his/her employment such rubber gloves shall be provided by the employer without cost to the employee.

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PART VIII – COMPLIANCE

1. TIME AND WAGES RECORDS

Each employer shall keep a time and wages record which complies with the requirements of Section 75 of the *Industrial Relations Act 1984*.

2. RIGHT OF ENTRY OF UNION OFFICIALS

Right of entry of union officials shall be in accordance with Section 77 of the *Industrial Relations Act 1984.*

James P McAlpine
COMMISSIONER

31 July 2006