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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s.23 application for award or variation of award

**The Minister administering the State Service Act 2000**  
(T13057 of 2007)

**General Conditions of Employment Award**

DEPUTY PRESIDENT SHELLEY

**Award variation – parental leave - consent matter - application granted - award varied - operative date 1/1/08**

**ORDER BY CONSENT -**

**No. 5 of 2007**

THE **GENERAL CONDITIONS OF EMPLOYMENT AWARD** IS VARIED IN THE FOLLOWING MANNER:

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**By inserting a new Clause 26A – Parental Leave as follows:**

**"26A. 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 spouse or a child who has previously lived continuously with the employee for a period of six months.
- (ii) For the purposes of this clause, **'continuous service'** is work for an employer on a regular and systematic basis including any period of authorised leave or absence.
- (iii) **'Eligible casual employee'** means a casual employee employed during a period of at least 12 months, either:
  - (1) on a regular and systematic basis for several periods of employment; or
  - (2) on a regular and systematic basis for an ongoing period of employment, and who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- (iv) **'Employee'** includes full time, part time, permanent, fixed term and "eligible" casual employees.
- (v) **'Expected date of birth'** means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child.
- (vi) **Normal rate of pay** means an employee's rate of salary and includes allowances which would have continued to be paid but for taking parental leave.

The normal rate of pay for a part-time employee with variable hours of work is calculated as the greater of the following:

- (1) the average of the hours worked by the employee over the preceding 12 months or;
- (2) the actual hours of work at the time of commencement of leave.

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- (vii) **'Parental Leave'** means adoption leave, maternity leave, special maternity leave and paternity leave, as appropriate.
  - (viii) **'Personal Leave'** for the purposes of this clause means absence due to personal illness or injury.
  - (ix) **'Spouse'** means a person who is married or a person who is in a significant relationship within the meaning of the *Relationships Act 2003*.  
A 'significant relationship' is a relationship between two adult persons who:
    - (1) have a relationship as a couple; and
    - (2) are not married to one another or related by family.
  - (x) **'Primary Care Giver'** means a person who assumes the principal role of providing care and attention to a child. The employer may require confirmation of primary care giver status.
  - (xi) **'State Service'** means an organisation listed in Schedule 1 of the *State Service Act 2000*
- (b) Entitlement
- (i) After 12 months continuous service parents are entitled to a combined period of up to 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of a child. For females, maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.
  - (ii) Parental leave is only available to one parent at a time in a single unbroken period, except both parents are entitled to access simultaneous parental leave in the following circumstances:
    - (1) for maternity and paternity leave an unbroken period of up to one week at the time of the birth of the child which includes one day of paid leave for the partner to attend 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) Right to request
    - (1) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:
      - (A) to extend the period of simultaneous unpaid parental leave provided for in this clause up to a maximum of eight weeks; and/or

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- (B) to extend the period of unpaid parental leave provided for in this clause by a further continuous period of leave not exceeding 12 months;

to assist the employee in reconciling work and parental responsibilities.

- (2) The employer is to consider a request, according to this clause and 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.
  - (iv) An employee is eligible, without resuming duty, for subsequent periods of parental leave in accordance with the provisions of this clause.
  - (v) An employee employed for a fixed term contract has the same entitlement to parental leave, however the period of leave granted is not to extend beyond the term of that contract.
- (c) Maternity Leave
- (i) After twelve months continuous service an employee is entitled to 12 weeks paid maternity leave which forms part of the 52 week entitlement provided in clause (b)(i).
  - (ii) The rate of pay for the period of paid absence is the normal rate of pay, as defined, for that employee.
  - (iii) An employee is to provide written notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) at least ten weeks notice of the expected date of birth in a certificate from a registered medical practitioner stating that the employee is pregnant;
    - (2) at least four weeks notice of the date on which the employee proposes to commence maternity leave and the period of leave to be taken.
    - (3) particulars of any period of paternity leave sought or taken by her spouse.
  - (iv) An employee is not in breach of this clause if failure to give the required notice is due to confinement occurring earlier than the presumed date.

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- (v) Subject to sub-clause(c)(i) and unless agreed otherwise between the employer and employee, an employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
  - (vi) An employee who continues to work within the six week period immediately prior to the expected date of birth, or an employee who elects to return to work within six weeks after the birth of the child is required to provide a medical certificate to the employer stating that she is fit to work on her normal duties.
- (d) Special Maternity Leave
- (i) An employee who has not yet commenced maternity leave and who suffers an illness related to her pregnancy or is required to undergo a pregnancy related medical procedure is to be granted any paid personal leave to which she is entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where a pregnancy related illness or medical procedure is continuous with the commencement of maternity leave the aggregate of paid personal leave, special maternity leave and parental leave, including parental leave taken by a spouse, is not to exceed 52 weeks.
  - (iii) Where the pregnancy of an employee terminates other than by the birth of a living child, not earlier than 20 weeks before the expected date of birth the employee is entitled to up to 52 weeks parental leave, including 12 weeks paid maternity leave, certified as necessary by a registered medical practitioner.
- (e) Paternity Leave
- An employee is to provide to the employer at least ten weeks notice prior to each proposed period of paternity leave, with:
- (i) a certificate from a registered medical practitioner which names the other parent, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
  - (ii) An employee is to provide written notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) the proposed dates to start and finish the period of paternity leave; and
    - (2) that the period of paternity leave will be taken to become the primary care-giver of a child; and
    - (3) particulars of any period of parental leave sought or taken by the other parent.

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An employee is not in breach of sub-clause (e) if the failure to give the required period of notice is due to the birth occurring earlier than expected, or due to the death of the mother of the child, or other compelling circumstances.

(f) Adoption Leave

- (i) After twelve months continuous service an employee identified as the primary care giver is entitled to 12 weeks paid adoption leave, which forms part of the 52 week entitlement.
- (ii) An employee is to 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 than expected.
- (iii) Before commencing adoption leave, an employee is to provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child; and
  - (2) particulars of any period of adoption leave sought or taken by the employee's spouse.
- (iv) An employer may require an employee to provide confirmation of the placement from the appropriate government authority.
- (v) Where the placement of a child for adoption with an employee does not proceed or continue, the employee is to notify the employer immediately and the employer is to nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (vi) An employee is not in breach of this clause as a consequence of failure to give the required periods of notice if the failure is due to a requirement of an adoption agency to accept earlier or later placement of a child, or due to the death of a spouse, or other compelling circumstances.
- (vii) An employee seeking to adopt a child is entitled to unpaid leave to attend any compulsory interviews or examinations that are necessarily part of the adoption procedure. The employee and the employer are to 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. If available paid leave, other than personal leave, may be taken instead.
- (viii) Adoption leave with pay may be granted in cases where a child is over 5 years of age and special circumstances exist.

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(g) Variation of Period of Parental Leave

With the agreement of the employer an employee may shorten or extend the period of parental leave, provided the maximum of 52 weeks is not exceeded. Any such change is to be notified at least four weeks prior to the commencement of the requested changed arrangements."

(h) Parental leave and other entitlements

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

(ii) Unpaid leave

(1) A period of unpaid leave is available according to this clause and may form part of an employee's parental leave entitlement.

(2) Any period of parental leave without pay in excess of 20 working days is regarded as leave without pay for accrual purposes, including for annual leave, personal leave and long service leave but does not break an employee's continuity of service.

(i) Transfer to a Safe Job

(i) 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 is to be transferred to a safe job, if the employer deems it practicable, until maternity leave commences.

(ii) 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 time as is certified necessary by a registered medical practitioner.

(j) Returning to Work After a Period of Parental Leave

(i) An employee is to notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

(ii) An employee is to notify of their intention to return to work on a part-time basis after a period of parental leave at least 8 weeks prior to the expiration of leave to enable the employer to satisfy the requirements of these provisions.

(iii) When an employee returns to work after a period of parental leave an employee is entitled to undertake the duties allocated to the position which they held immediately before proceeding on parental leave and which the employee would have continued to undertake but for taking parental leave:

(1) if the female employee was moved to safe duties because of the pregnancy – immediately before the move; or

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- (2) if the female employee began working part-time because of the pregnancy – immediately before the part-time work began; or
    - (3) otherwise – immediately before the employee commenced maternity leave, except duties for which the employee was in receipt of a higher or more responsible duties allowances, unless the employee resumes those duties upon returning to work.
  - (iv) If those duties no longer exist, the employer is to assign similar duties at the same classification, as appropriate, to the employee.
- (k) Right to request
- (i) An employee entitled to parental leave pursuant to the provisions of clause (b)(i) may request the employer to allow the employee 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 is to 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 suitable replacement staff, loss of efficiency and effectiveness, the specialised nature of the work and the impact on customer service.
  - (iii) An employee may return to work on a modified basis that may involve the employee:
    - (1) working on different days or at different times, or both; and/or
    - (2) working on fewer days or for fewer hours or both, and/or
    - (3) undertaking different duties at the same classification;than the employee worked immediately before commencing parental leave, other than for an employee to whom sub-clause (i) applied.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged or promoted or transferred for a fixed-term as a result of another employee proceeding on parental leave.
  - (ii) Prior to engagement, a replacement employee is to be informed of the fixed-term nature of the employment and of the rights of the employee who is being replaced, including that the engagement may be subject to variation according to sub-clause (g) and the right to request provisions of sub-clause (b)(iii).

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

(m) Communication During Parental Leave

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

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

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

(ii) The employee is to 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 is to also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (m)(i) above."

**OPERATIVE DATE**

This variation shall come into operation from 1 January 2008.

P C Shelley  
**DEPUTY PRESIDENT**

21 December 2007