

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984  
s.23 application for award or variation of award

**Australian Workers' Union**  
**Tasmania Branch**  
(T.3313 of 1991)

**SHELLFISH INDUSTRY AWARD**

COMMISSIONER R J WATLING

18 February 1992

Making of award - wage rates and conditions of employment

**ORDER BY CONSENT -**

**No. 1 of 1992**  
**(Consolidated)**

AMEND THE **SHELLFISH INDUSTRY AWARD** BY DELETING ALL CLAUSES CONTAINED  
THEREIN AND INSERT IN LIEU THEREOF THE FOLLOWING:

**1. TITLE**

This award shall be known as the Shellfish Industry Award.

**2. SCOPE**

This award is established in respect of the industry of producing live shellfish and includes the marine farming of oysters, mussels, clams, scallops and abalone.

**3. ARRANGEMENT**

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**4. DATE OF OPERATION**

This award shall come into operation from the first full pay period on or after 13 February 1992.

**5. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes No. 2 of 1991 (Consolidated).

**6. PARTIES AND PERSONS BOUND**

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

- (a) all employers (whether members of a registered organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a registered organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
  - (i) the Australian Workers' Union , Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:
  - (i) the Tasmanian Confederation of Industries.

**7. DEFINITIONS**

**`Casual Employee`** means any person who is engaged on an irregular basis to perform specific task(s) over a defined time period. At the completion of such period and or task(s) the contract of employment shall be deemed to be terminated.

**`Junior employee`** means any person engaged as either a full time employee or a casual employee who has not attained the age of 18 years.

**`Full-time employee`** means any person who is engaged on an ongoing full time basis on one of the work cycles described in Clause 17 - Hours and Days of Work, subclause (a).

**Shellfish Farm Attendant - Level 1**

**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 76Z)**

A Shellfish Farm Attendant - Level 1 means an employee who has not completed at least four months service in the industry as prescribed in Clause 2 - Scope and who is engaged on either an inter-tidal, deep water, or land-based shellfish farm or enterprise to operate, with supervision, some or all of the following:

boats or punts; loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking); recording data; mechanical equipment such as grading machines; as well as general maintenance duties.

**Shellfish Farm Attendant - Level 2**

**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 80Z)**

A Shellfish Farm Attendant Level 2 means an employee who has completed at least four months service as a Shellfish Farm Attendant - Level 1 (as defined) and in addition is capable of performing, without constant supervision, some or all of the following functions:

operate boats or punts; loading, unloading, moving, packing, constructing of shellfish culture mediums (including baskets, cages, droplines and oyster racking); recording data, operation of mechanical equipment such as grading machines; as well as general maintenance duties.

**Shellfish Farm Attendant - Level 3**

**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 93Z)**

A Shellfish Farm Attendant - Level 3 means an employee who, in addition to performing some or all of the functions of Shellfish Farm Attendant - Level 2 (as defined), may be required to accept responsibility for acting in a minor supervisory capacity in directing the work of other employees.

**Shellfish Farm Attendant - Level 4**

**(Z Wage relativity to Shellfish Farm Attendant Level 4 - 100Z)**

A Shellfish Farm Attendant - Level 4 means an employee who, in addition to performing some or all of the functions of Shellfish Farm Attendant - Level 2 (as defined), directs the work of other employees and accepts responsibility for acting in charge.

'**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 11 paid holidays per year.

**8. WAGE RATES**

1. WAGES - ADULTS

- (a) Adult employees in a classification level undermentioned shall be paid the base rate and supplementary payment appearing opposite that classification.

Classification Level	Base Rate	Supplementary Payment	Award Rate
Shellfish Farm Attendant (as defined) Level 1	277.60	39.50	317.10
Shellfish Farm Attendant (as defined) Level 2	292.20	41.60	333.80
Shellfish Farm Attendant (as defined) Level 3	339.60	48.40	388.00
Shellfish Farm Attendant (as defined) Level 4	365.20	52.00	417.20

- (b) The amount appearing in the column headed Supplementary Payment in this clause is to be absorbed against any overaward payment being paid by an employer as from the first full pay period on or after 13 February 1992.

2. JUNIORS

A junior employee (as defined) shall be paid the undermentioned percentage of the award wage rate for a Shellfish Farm Attendant Level 1 (as defined).

Under 17 years of age	65%
Over 17 years of age but under 18 years of age	75%

**9. ANNUAL LEAVE**

(a) Period of Leave

Subject to subclause (g) of this clause a period of 152 hours annual leave shall be allowed annually to a full-time employee (as defined) after 12 months continuous service with the same employer.

(b) Time of Taking Leave

Leave allowable under this clause for a full-time employee (as defined) shall be given by mutual agreement between the employer and the full-time employee (as defined) or at a time fixed by the employer within a period of 12 months after the right to annual leave provided that 2 weeks notice is given to the full-time employee (as defined).

(c) Payment in Lieu Prohibited

Except as provided in subclause (e) of this clause, payment shall not be made or accepted in lieu thereof.

(d) Payment for Period of Leave

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

(ii) In addition thereto, all full time employees (as defined) shall receive a loading of 17.5% on payments made for annual leave. Such loading shall not apply to proportionate leave on termination of service, excepting where termination by the employer is through no fault of the employee.

(e) Proportionate Leave on Termination of Service

If, after one month's service in any 12 monthly period, a full-time employee (as defined) leaves his employment by giving one week's notice, or the employment is terminated by the employer, as prescribed in Clause 12 - Contract of Employment, subclause (d) (i), the employee shall be paid at the rate of 2.923 hours per completed week of service.

(f) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 16 - Holidays with Pay, fall during an employees' annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.



(g) Broken Leave

Annual leave shall be taken in a continuous period provided that when the employee and the employer mutually agree then leave may be taken in more than one period however one such period must be of at least 7 consecutive days (5 working days).

(h) Disputes

Any dispute under this clause shall be processed in accordance with Clause 26 - Resolution of Disputes.

**10. CLOTHING**

(a) Where the nature of the work requires an employee to wear waterproof waders, overpants, waterproof boots and gloves and/or raincoats they shall be provided by the employer free of cost to the employee on a fair wear and tear basis, and shall be of such quality as is appropriate to the nature of the work.

(b) Overalls or other suitable protective clothing shall be provided where the nature of the work causes undue wear or deterioration to normal working clothes if requested by the employee provided that one set of such clothing shall be supplied to all employees only after 3 months service, and thereafter at intervals of not less than 6 months or otherwise agreed by the employer and the employee.

**11. COMPASSIONATE LEAVE**

A full-time employee (as defined) shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days, provided that no payment shall be made in respect of a day on which an employee was not otherwise expecting to work.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

**12. CONTRACT OF EMPLOYMENT**

(a) General

(i) Upon commencing work with an employer all employees shall be classified under a level as prescribed in Clause 8 - Wage Rates of this award.

(ii) All employees on engagement shall be provided with:

(1) Written advice indicating which classification level applies,

(2) Written advice as to the work cycle provided by Clause 17 - Hours and Days of Work,

**PROVIDED** that subclauses (1) and (2) herein shall also apply in respect of an employee who is reclassified after engagement.

(iii) 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.

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

(b) Full-Time Employees (as defined)

Full-time employees (as defined) shall be engaged by the week.

(c) Casual Employees (as defined)

(i) Casual employees (as defined) shall be engaged for minimum period of 3 hours per day.



- (ii) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty eighth of the weekly rates prescribed for a full-time employee (as defined) engaged at the appropriate classification level prescribed in Clause 8 - Wage Rates plus 20%; such additional amount to be payable in lieu of annual leave, sick leave and holidays with pay.
  - (iii) A casual employee (as defined) required to work on a holiday as prescribed in Clause 15 - Holiday, Saturday, Sunday and Overtime Payment and/or Clause 16 - Holidays with Pay shall be paid at the penalty rate applicable to a full-time employee (as defined) engaged at the appropriate classification level prescribed in Clause 8 - Wage Rates (i.e. this calculation shall exclude the 20% loading prescribed in subclause (ii) herein).
- (d) Termination of Employment
- (i) A full-time employee (as defined) may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
  - (ii) A casual employee (as defined) may be terminated only by the giving of not less than one hours notice or the payment in lieu or forfeiture of one hours pay whichever is appropriate.
  - (iii) Termination of employment by an employer shall not be harsh, unjust or unreasonable.
    - (1) For the purpose of this subclause, termination of employment shall include termination with or without notice.
    - (2) Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, natural extraction or social origin shall constitute a harsh, unjust or unreasonable termination of employment.
  - (iv) Nothing in this clause shall effect the right of an employer to dismiss an employee without notice for wilful misconduct or refusing duty.

**13. ENTERPRISE FLEXIBILITY**

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:-
  - (i) The majority of employees affected by the change must genuinely agree to the change.
  - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
  - (iv) The relevant union must be a party to the agreement.
  - (v) The relevant union shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:-
  - (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

**14. FIRST AID**

- (a) The employer shall provide and maintain, in accordance with the Industrial Health and Safety Act (1977) and Regulations (1979), a first aid outfit including an affixed listing of current employees holding a first aid certificate.
- (b) A full time employee (as defined) holding first aid qualifications from the Red Cross Society, St John Ambulance or similar body and appointed by the employer to perform first aid duty shall receive \$1.75 per working day.

**15. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENT**

(a) Holidays

- (i) Subject to the provisions of Clause 16 - Holidays with Pay, subclause (d) all employees who perform work on a holiday as prescribed in Clause 16 - Holidays with Pay shall be paid at the rate of double time and one half.
- (ii) Subject to the provisions of subclause (a) (i) herein all employees who are required to work on any of the days prescribed in Clause 16 - Holidays with Pay shall be paid for a minimum of three hours.

(b) Overtime - Full-time Employees (as defined)

- (i) For work performed by an employee in excess of the number of hours or outside the span of hours specified in Clause 17 - Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.
- (ii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
- (iii) A full-time employee (as defined) shall work a reasonable amount of overtime as directed by the employer.

**PROVIDED** that by agreement between the employer and the employee, the employee may accrue time in lieu of the overtime payment prescribed in this clause. Such accrued time shall be calculated as time for time not at the overtime or penalty equivalent and may be taken as time off in lieu at the ordinary time rate at a time mutually agreed between the employer and the employee.

(c) Overtime, Saturday and Sunday Payment for Casual Employees (as defined)

- (i) For work performed on a Saturday payment shall be made at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.
- (ii) For work performed on a Sunday payment shall be made at the rate of double ordinary time.

- (iii) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Clause 17 - Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first three hours and double time thereafter.

**16. HOLIDAYS WITH PAY**

- (a) All full time employees shall be allowed the following days as paid holidays:  

Christmas Day, Boxing Day, New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day (where it falls Monday to Friday inclusive), Queen's Birthday, Show Day (as defined ) and Recreation Day in those districts where Hobart Regatta Day is not observed.
- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when if it were not for such holiday, the employee had been at work.
- (c) Where any of the aforementioned holidays, excluding Anzac Day, fall on a Saturday, Sunday or Rostered Day Off and are observed on the Saturday, Sunday or Rostered Day Off respectively, then the following ordinary working day shall be regarded as a holiday for the purposes of this award.
- (d) Where the employer and employees mutually agree then any other day may be substituted for any of the above named days.

**17. HOURS AND DAYS OF WORK**

- (a) The ordinary hours of work for a full-time employee (as defined) shall be an average of 38 per week to be worked on one of the following basis:
  - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
  - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
  - (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
  - (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or



(v) Any other work cycle agreed by an employer subject to this award and the majority of employees affected during which a weekly average of 38 ordinary hours are worked.

- (b) The ordinary hours of work prescribed in (a) hereof shall not exceed eight on any day and shall be worked consecutively within the span of hours of 5 a.m. - 8 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

**PROVIDED** that by agreement between an employer and the majority of employees affected the ordinary hours of work prescribed herein may be worked Monday to Sunday inclusive.

**PROVIDED ALWAYS** that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day.

- (c) The ordinary hours for a casual employee (as defined) shall not exceed 8 on any one day and shall be worked consecutively within the span of hours of 5.00 a.m. - 8.00 p.m., Monday to Friday inclusive and are set and may be varied by the employer from time to time.

**PROVIDED** that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day.

#### **18. 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.
- (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, by 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.
- (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;
- (ii) paid sick leave or other paid authorized 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.
- (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.
- (b) Unless the employer advises an employee on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second or subsequent meal or make payment in lieu thereof as above prescribed.

**19. MEAL ALLOWANCE**

An employee required to work for more than 10 hours on any one day without being notified on the previous day or earlier that he/she will be so required to work shall either be supplied with a meal by the employer or paid \$5.00

Unless the employer advises an employee on the previous day or earlier that the amount of time to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second and/or subsequent meals or make payment in lieu thereof as above prescribed.

**20. MEAL PERIOD**

- (a) Prior to the cessation of work each day after a period of no longer than 5 hours from commencement of work, an unpaid meal break of not less than thirty minutes, shall be taken at a time mutually agreed between the employer and the employee.

**PROVIDED** that for the purpose of ensuring completion of a task or tasks before change of tide or to ensure the timely return of shellfish to a growing or holding area in the water the employer and employee may agree to a break for a meal occurring at some other time prior to the cessation of work on that day.

- (b) Where an employee is expected to work continuously for a period of at least 4 hours, the employee shall be allowed a tea break during that period of at least 10 minutes without deduction of pay.



**21. MIXED FUNCTIONS**

- (a) An employee engaged for more than 3 hours on any one day on duties classified at a higher level as described in Clause 7 - Definitions shall be paid at the higher rate for the whole day. If for less than 3 hours on any one day he/she shall be paid the higher rate for the time so worked.
- (b) This provision shall not apply in circumstances where an employee is performing higher duties as part of training programme, which is directed to skill enhancement and is recognised by an accredited Industry Training Body and/or Tertiary Institution.

**22. NO REDUCTION IN WAGES IN CERTAIN CASES**

Subject to the provisions of Clause 8 - Wage Rates, subclause (b) of this award, where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee, the wage rates so paid in excess shall not be reduced as a result of this award.

**23. PAYMENT OF WAGES**

- (a) Wages may be paid weekly, fortnightly or monthly by agreement between the employer and employee, by direct bank deposit cheque or cash.
- (b) On termination all monies due to the employee shall be paid at the time of termination, or where this is not practicable the next day when banking facilities are available.

**24. PREFERENCE OF EMPLOYMENT**

- (a) Providing all persons are adequately experienced and otherwise competent preference shall be given on engagement to members of the Australian Workers' Union, Tasmania Branch or those who give an undertaking to become a member within 14 days.
- (b) The owner of the business, the spouse and children of the owner shall not be subject to the provisions of this clause.
- (c) Conscientious objectors who hold a certificate pursuant to section 32(8) of the Industrial Relations Act 1984, shall not be subject to the provisions of this clause.

**25. PRODUCTIVITY AND EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the Scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer and the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.
- (h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of Clause 26 - Resolution of Disputes.

**26. RESOLUTION OF DISPUTES**

Any industrial dispute arising shall be dealt with as follows:-

- (a) the matter should first be discussed between the employee and his/her immediate supervisor. At the employee's option the union delegate may also be present;
- (b) if not settled, the matter shall be submitted by the union representative or union officer to the employer;
- (c) if not settled, the matter shall be determined by the Tasmanian Industrial Commission whose decision will be final;
- (d) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, its officials, the union and its 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 clause.

**27. RIGHT OF ENTRY OF UNION OFFICIALS**

For the purposes of interviewing employees on legitimate union business a duly accredited Australian Workers' Union, Tasmania Branch representative shall have the right to enter the employer's premises at a mutually agreed time provided:

- (a) that he/she produces his/her authority to the employer or such other person as may be appointed by the employer to be the senior person present;
- (b) that no one representative visits the premises more than once in each week.
- (iii) that if an employer alleges that a representative is unduly interfering with his/her work or is creating dissatisfaction amongst employees or is offensive in his/her methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.

**28. SAFETY EQUIPMENT**

All safety equipment issued by the employer must be worn or used by an employee at the direction of the employer.

**29. SICK LEAVE**

- (a) A full-time employee (as defined), entitled to sick leave payments 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) an employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
  - (ii) the employee shall, wherever possible, inform the employer of his/her inability to attend for work prior to the commencement of such absence and as far as may be practicable, state the general nature of the illness or injury and the estimated duration of the absence;
  - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
  - (iv) subject to subclause (v) hereof a full-time employee (as defined) shall be entitled to a sick leave credit of 76 ordinary hours per year;
  - (v) During the first 6 months of employment sick leave shall accrue on a monthly basis at the rate of 6.33 hours of sick leave for each completed month of service with the employer which accrual shall be the limit of an employees entitlement to sick leave during that period.
- (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/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

**30. SUPERANNUATION**

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into TASPLAN (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 13 February 1992.
- (ii) 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.
- (iii) For new employees contributions shall commence from the date the employee commenced employment.
- (iv) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Casual Employees

Contributions shall be made in respect to a casual employee (as defined) where that employee works at least 20 hours over a fund billing statement month.

(c) Definitions

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



**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'Ordinary Time Earnings'** shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

**'TASPLAN'** shall mean the superannuation fund established by Trust Deed made on 2 March 1989 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(d) Exemptions

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

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 1 January 1992 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 1 January 1992 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN.

(d) Procedure for Seeking Exemption

- (i) An employer seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 July 1992 for hearing and determination.

Such application shall contain the following information:

- (a) Name of Fund into which the funds are to be paid.

- (b) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (c) Summary of Structure and Benefits.
  - (d) Level of Administration Charge.
  - (e) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union party to the award. Where the union agrees with the application, the exemption will be granted.
  - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
  - (iv) An employer who commences a new business after 13 February 1992 may make application for exemption in accordance with subclause (d) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 13 February 1992.

**31. TRAVELLING ALLOWANCE AND TIME**

- (a) An employee who on any day or from day to day is required to work at a job away from his usual work place shall at the direction of the employer present for such other work place at the usual starting time; but all time reasonably spent in reaching and returning from such work place (in excess of the time normally spent in travelling from the employees home to usual work place and returning) travelling time shall be paid at the ordinary rates of pay.
- (b) Where any employee is required to remain away from their usual place of residence the employee shall be paid for all expenses reasonably incurred whilst so absent.
- (c) Where the employee with the approval of the employer is required to use a private motor vehicle for the purposes of this clause the employee shall be paid 31 cents per kilometre travelled.

