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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T12940 of 2007)
Private Sector Awards
Public Sector Awards

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

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by $22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to $14.10 - State Minimum Wage rate determined at $527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

SHIPBUILDERS AWARD

ORDER -

No. 1 of 2007
(Consolidated)

AMEND THE **SHIPBUILDERS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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1. TITLE

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

2. SCOPE

This award is established in respect of the industries of:

(a) constructing, altering or repairing ships or boats;

(b) dunnaging of ships' holds.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2007.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Shipbuilders Award No. 2 of 2006 (Consolidated).

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

6. PARTIES AND PERSONS BOUND

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

(a) all employers (whether members of a registered organisation or not) who are engaged in the industry specified in Clause 2 - Scope;

(b) all employees (whether members of a registered organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;

(c) the following organisations of employees in respect of whom award interest has been determined:

(i) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

(ii) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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(d) The following organisation of employers in respect of whom award interest has been determined:

(i) the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Shipbuilding', for the purposes of this award shall mean any work on any ship including fitting out, constructing or repairing any steamer, lighter, punt, yacht, barge, pontoon, or any hull of like nature, constructed of wood, steel or other metal, fibreglass, or concrete or any material of a like substance used for transport purposes, or the general repairing of such vessels or any floating structure.

'Shipbuilding Industry Employee Level 1 - 78.0%'

A Level 1 employee is a person who is undertaking up to 38 hours induction training and/or who works under direct supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level is able to perform general labouring and cleaning duties which require minimal judgment.

'Shipbuilding Industry Employee Level 2 - 82.0%'

A Level 2 employee is a person who works under direct supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level may assemble components and undertake routine tasks from basic instructions by the application of selected hand tools, or by the use of basic welding techniques or the operating of elementary machinery.

'Shipbuilding Industry Employee Level 3 - 87.4%'

A Level 3 employee is a person who works under routine supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level has developed appropriate non-trade skills in the effective application of hand and power tools. Has effective measurement skills, understands inventory skills and is able to utilise a keyboard and uses all relevant lifting and mobile equipment.

'Shipbuilding Tradesperson - 100%'

This classification includes a Shipwright, Ships Carpenter and/or Joiner, or Painter.

'Ship's Carpenter or Joiner' means any employee making and fixing all joinery necessary for the fitting out of such ships and/or general repairing of same.

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'Shipwright' means an employee engaged on any work described in 'Shipbuilding' above.

'Show day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

8. WAGE RATES

1 - ADULT EMPLOYEES

(a) Adult employees of a classification specified hereunder shall be paid the weekly wage rate assigned to that classification.

SHIPBUILDING INDUSTRY	Base Rate Relativity %	Base Rate $	Safety Net Adjustment $	Weekly Wage Rate $
(1) Tradesperson	100	417.20	203.70	620.90
(2) Employee Level 3	87.4	364.60	201.70	566.30
(3) Employee Level 2	82	342.10	201.70	543.80
(4) Employee Level 1	78	325.40	201.70	527.10

(b) The hourly rate is one thirty-eighth of appropriate weekly wage rate prescribed herein.

(c) Dunnaging

The minimum rate of wage that may be paid by employers to employees engaged in the dunnaging of ships during the ordinary working hours prescribed in Clause 18 - Hours, subclause (a) of this award shall be $20.306852 per hour.

This rate is calculated as one thirty-eighth of the sum of the weekly wage rate for classification (1) Tradesperson hereof plus a tool allowance of $8.30, multiplied by 52 and divided by 42.2.

The factor of 42.2 is computed taking into account pro rata entitlements to the following:

20 working days annual leave; 10 days personal leave; 11 days public holidays; 8 days for following the job.

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In addition to the hourly rate prescribed herein the following amounts shall also be paid for each hour worked:

(i) a disability payment of $0.48 cents per hour; and

(ii) an amount for annual leave loading calculated as follows:

$$\frac{\text{Minimum Wage (as prescribed in subclause 3 herein)}}{38 \times 52}$$

(d) Leading Hands

(i) If in charge of 2 to 8 employees, shall be paid $0.51 cents per hour extra.

(ii) If in charge of more than 8 employees, $0.84 cents per hour extra.

2 - APPRENTICES

The minimum weekly wage rate that may be paid to apprentices shall be the undermentioned percentages of the wage applicable to classification (1), Division 1 - Adult Employees, of this clause.

Four-year term	Percentage of Weekly Wage Rate %
First year	38
Second year	55
Third year	75
Fourth year	90

PROVIDED that the weekly wage rates for apprentices shall be adjusted to the nearest 10 cents. In addition to the rate prescribed herein there shall be added a tool allowance of $11.50 per week which sum shall not be taken into account in the computation of overtime or any other penalty rates.

An employer who provides an apprentice with a kit of tools may deduct from the wages of the apprentice the tool allowance of $11.50 per week until such time as the employer is reimbursed the cost of the tools. In the event of an apprentice being dismissed or leaving the employment before the cost of the tools has been reimbursed, the employer shall be entitled to deduct from any monies owing to the apprentice the amount then owing or to retain such tools as will equal the value then owing.

Tools so provided shall be kept at the employer's establishment during the usual hours of work.

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3 - MINIMUM WAGE

Notwithstanding the provisions of Division 1 - Adult Employees hereof, no adult employee shall be paid less than the rate of $527.10 per week.

PROVIDED that payments for overtime, special rates, weekend penalties, holiday work, shift allowances, and disability allowances prescribed in this award shall be taken into account in the calculation of such minimum weekly rate of wage.

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

4 - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

Subject to this division an employer may engage employees at a supported wage rate (as set out in subclause (c) of this part) 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 division 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 division 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 division:

(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 division 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(subclause (d))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

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

(d) Assessment of capacity

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

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

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

(e) Lodgment of assessment instrument

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

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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 10 working days.

(f) Review of assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this division 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 division 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 division 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 subclauses (d) and (e).

(iii) The minimum amount payable to the employee during the trial period shall be no less than $61 per week or such greater amount as is agreed from time to time between the parties.

(iv) Work trials should include induction or training as appropriate to the job being trialed.

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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 subclause (c) hereof.

9. AMENITIES

Employers shall provide amenities in accordance with those prescribed in the *Workplace Health and Safety Act 1995*, and the Regulations made thereto.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to employees (other than casual employees and dunnagers) after 12 months' continuous service (less the period of annual leave).

(b) Method of Taking Leave

(i) Time of Taking Leave

Annual leave shall be given at a time agreed between the employee and the employer within a period not exceeding six months from the date when the right to annual leave accrued.

(ii) Either 28 consecutive days, or two separate periods of not less than seven consecutive days in all cases exclusive of any public holidays occurring therein the right to annual leave accrued.

(iii) **PROVIDED** that by agreement between the employer and employee leave may be taken in any other combination.

(iv) Where an employee requests that leave be allowed in one continuous period such request shall not be unreasonably refused. In the event of lack of agreement between the parties the matter shall be referred to the Tasmanian Industrial Commission.

(v) In the circumstances where a public holiday falls within one day of the weekend or another public holiday the provisions of subclause (b)(iii) of this clause may be altered by agreement between the employer and a majority of employees affected under this award to provide that a day of annual leave entitlement may be granted on the day between the said public holiday and/or weekend if an employee, or employer, requests it.

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(c) Leave Allowed Before Due Date

(i) An employer may allow an employee to take his annual leave prior to the employee's right thereto having accrued due. In such circumstances the qualifying period of further annual leave shall not commence until the expiration of the 12 months in respect of which the leave so allowed was taken.

(ii) Where an employer has allowed an employee to take his annual leave pursuant to subclause (a) of this clause and the employee leaves of is terminated (by whatsoever cause) prior to the employee completing the 12 months' continuous service for which leave was allowed in advance, the employer may for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/52nd of the amount of wages paid on account of the annual leave.

(d) Proportionate Leave on Termination

Where an employee has given five working days or more continuous service, inclusive of any day off as prescribed by Clause 18 - Hours or Clause 33 - Shift Work, and he either leaves his employment or his employment is terminated by the employer he shall be paid 1/12th of an ordinary week's wages in respect of each completed five working days of continuous service with his current employer for which leave has not been granted or paid for in accordance with this award.

(e) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous notwithstanding an employee's absence from work for any of the following reasons:

(i) illness or accident up to a maximum of four weeks after the expiration of paid personal leave;

(ii) bereavement leave;

(iii) jury service;

(iv) injury or illness received during the course of employment and up to a maximum of 91 days for which the employee received workers' compensation;

(v) long service leave;

(vi) where an employee is called as a witness on behalf of Commonwealth or State;

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(vii) leave of absence not exceeding three months which has been granted where the employer is satisfied that the employee's absence is the direct result of war service;

(viii) any reason satisfactory to the employer or in the event of dispute to the Tasmanian Industrial Commission.

PROVIDED that the reason shall not be deemed satisfactory unless the employee has informed the employer within 24 hours of the time when he was due to attend for work or as soon as practicable thereafter of the reason for the absence and probably duration thereof.

(f) Payment for Period of Leave

All employees, before going on annual 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 during the relevant period. In addition thereto, all employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, Division 3 - Minimum Wage.

(g) Commencement of Leave - Distant Jobs

Where an employee is working at a location remote from the normal place when scheduled to commence leave the employee shall be allowed one day for travel before such leave commences.

(h) Payment in Lieu Prohibited

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by subclause (d) of this clause, payment shall not be made or accepted in lieu thereof.

11. BEREAVEMENT LEAVE

(a) An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild, 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.

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.

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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.

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.

(b) Unpaid Bereavement Leave

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

(c) Casual Employees

(i) Subject to the evidentiary requirements in subclause (a), casual employees 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. Casual Employees are 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.

12. COMMITMENTS

(a) Structural Efficiency Exercise

(i) An employer may direct an employee to carry out such duties as are within the limit of the employee's skill, competence and training consistent with the classification structure of this award.

PROVIDED that such duties are not designed to promote de-skilling.

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.

(ii) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

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(iii) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry and to enhance the career opportunities and job security of employees in the industry.

(iv) Measures raised for consideration shall be related to implementation of a new classification structure and/or other relevant matters.

(v) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility within an enterprise shall be implemented subject to the agreement of the parties to this award and subject to the following requirements:

(1) the parties will consider the implications of the proposed measures for existing arrangements;

(2) the majority of employees affected by the change at the enterprise must genuinely agree to the change;

(3) no employee shall lose income as a result of the change;

(4) any agreement which affects a provision of this award shall be subject to approval by the Tasmanian Industrial Commission.

(vi) Award restructuring shall 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.

(vii) 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:

(1) developing a more highly skilled workforce;

(2) providing employees with career opportunities through appropriate training to acquire additional skills; and

(3) removing barriers to the utilisation of skills acquired.

(viii) Any dispute arising in relation to the implementation of this clause shall be subject to the provisions of Clause 32 - Settlement of Disputes.

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(b) Award Modernisation

(i) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.

(ii) The parties commit themselves to the following principles as part of the structural efficiency process and have agreed to participate in testing a new classification structure.

(1) Acceptance in principle that new award skill level definitions will be more suitable for the needs of the industry, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the tasks now performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.

(2) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.

(3) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputation.

(iii) The parties agree that the working party will continue to meet the aim of modernising the award.

13. DISABILITY ALLOWANCE

In addition to the wage rates prescribed in Clause 8 - Wage Rates and allowances prescribed in Clause 34 - Special Rates hereof, employees other than dunnagers engaged on work in ship and boat yards and on ship repairs shall be paid an amount of $19.60 per week of 38 hours. Where a greater or lesser number of hours are worked in a week and for casuals payment shall be made pro rata to the rate herein prescribed.

14. DISTANT JOBS

Employees engaged on distant jobs (i.e., a job that necessitates an employee being unable to return home at night) shall be provided with all travelling expenses, accommodation and meals, together with an allowance of $2.90 per day.

15. FIRST AID CERTIFICATE ALLOWANCE

An employee who is the holder of a current Red Cross Society, St John Ambulance or other recognised first aid certificate, shall, if required to act as a first aid attendant, be paid $2.20 per day extra.

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16. FIRST AID EQUIPMENT

The employer shall provide an maintain first aid equipment in conformity with the standards prescribed in the *Workplace Health and Safety Act 1995*.

PROVIDED that in the case of employees required to work away from the employer's fixed work place the employer shall provide to each work group a fully maintained first aid kit.

17. HOLIDAYS WITH PAY

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

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Eight Hours' Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day, or such other days as may be observed in the locality in lieu of any of the said days.

(b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday he had been at work.

(c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed in Clause 24 - Overtime, subclause (c) of this award.

(d) Where the employer and the employee agree, an alternate day may be substituted for any of the holidays with pay prescribed in subclause (a) herein. In these circumstances payment for work performed on the alternate day shall be at the rates specified in Clause 24 - Overtime, subclause (c) of this award.

18. HOURS

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

(i) 7 hours 36 minutes per day, or

(ii) 8 hours per day on nine days and 4 hours on one day per fortnight, or

(iii) 8 hours per day on nineteen days with a rostered day off, or

(iv) 8 hours per day with an accumulation of rostered days off up to a maximum of two days.

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(v) Such other method agreed between the employer and the majority of employees.

The actual method of implementation shall be determined by mutual agreement between the majority of employees and the employer, utilising one of the above methods.

(b) The maximum number of ordinary hours per week in respect of which the wage rates fixed by the award shall be paid shall be an average 38 to be worked in five days of consecutive hours (excluding meal breaks) between the hours of 6.00 a.m. and 6.00 p.m., Monday to Friday inclusive.

(c) The hours of work prescribed by this clause shall, except for the unpaid meal break specified in subclause (d) of this clause, be continuous on each day.

(d) Meal Break

(i) A meal break of at least 45 minutes but no more than 60 minutes shall be allowed to an employee after not more than five hours continuous work. The meal break shall be taken between the hours of 11.00 a.m. and 3.00 p.m.

PROVIDED that where there is agreement between the employer and the employee, the meal break may be reduced to 30 minutes.

PROVIDED FURTHER where the employer and the employee agree, an employee may work for more than five hours, but no more than six hours, at ordinary rates of pay without a break for a meal to meet the circumstances of the work in hand.

(ii) An employee shall not work for more than five hours without a meal break of at least 30 minutes except where:

(1) overtime is worked for a period of one hour or less after an employee's normal finishing time, or

(2) the employer and the employee concerned reach agreement in accordance with paragraph (i) of this subclause.

(iii) Subject to the exceptions mentioned in paragraph (ii) of this subclause, an employee required to work for more than five hours by the employer without a meal break shall be paid in accordance with the overtime rates specified in Clause 24 - Overtime, subclause (a) until such time as a meal break is allowed.

(e) The employer and the majority of employees may agree that the ordinary working hours are to exceed eight (up to a maximum of 10) on any day, thus enabling a week day off to be taken more frequently than would otherwise apply.

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(f) If an RDO is to be substituted, three days notice (except in emergencies) shall be given to the employee and a day off in lieu at the ordinary rates at a mutually agreeable time.

In circumstances whereby a system of RDO's apply, an employer with the agreement of the employee, may in an emergency situation, substitute the day an employee is to take off for another day.

PROVIDED that such agreement will not be unreasonably withheld.

(g) If an employee is required to work on an RDO and no day in lieu is granted, the employee is to be paid at overtime rates for the hours worked paid for the RDO.

19. JOB STEWARD

An employee appointed as a job steward shall upon notification by the union to the employer be recognised as the accredited representative of the union to which he belongs and he shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he represents.

20. JURY SERVICE

An employee required to attend for jury service shall be entitled to have his pay made up by the employer to equal his ordinary pay (inclusive of any accrual entitlements prescribed by Clause 18 - Hours or Clause 33 - Shift Work, subclause (d) of this award) whilst meeting this requirement. The employee shall give his employer proof of such attendance and the amount received in respect of such jury service.

21. MINIMUM PERIOD OF ENGAGEMENT - DUNNAGING ONLY

An employee who is engaged for work shall, if he presents himself at the job, be entitled to a minimum payment as for four hours' work at the appropriate rate.

22. MISCELLANEOUS

Grinding Tools

The employer shall provide a suitable grinding stone on every job for the use of employees, with machine or hand power for turning same.

Damage to Clothing or Tools

In the event of employees, whilst in the service of an employer, having their clothing or tools spoilt by acid, sulphur or other deleterious substance, they shall be recompensed for such loss by the employer.

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Lock-up for Tools

Employers shall provide, wherever possible, or arrange for, a suitable weatherproof place or lockup in which to store employees' tools.

Bundy Clock etc.

Where Bundy clocks or checks are in use, and where such are rung off during lunch hour, such ringing-off and on shall be done in the employer's time.

23. NOTICE OF DISMISSAL (DUNNAGING)

If an employee, not having been notified at or before 5.15 p.m. or two hours before knocking-off time on any day that he will not be required on the following day, presents himself for work on such following day, he shall be entitled to a minimum payment as for four hours at the appropriate rate for such day, except in a case where his not being required for work is due to a breakdown of machinery or other circumstances over which the employer has no control.

24. OVERTIME

(a) All time worked outside the hours specified in Clause 18 - Hours hereof, or for work performed in excess of eight consecutive hours in each day (excluding meal breaks) shall be paid for at the rate of time and one half for the first two hours and double time thereafter; such double time to continue until completion of shift.

(b) For employees engaged on dunnaging all overtime shall be at the rate of double time.

(c) For all work performed on any of the holidays mentioned in Clause 17 - Holidays with Pay hereof, payment shall be made at the rate of two and one half times the ordinary rate.

(d) In the event of an employee working for 24 consecutive hours he shall not be employed during the next 24 hours.

PROVIDED that they shall be paid for any ordinary time falling during that 24 hour period.

(e) No employee shall work more than 24 hours overtime in any one week. For the purposes of this subclause, Saturday and Sunday shall not be regarded as part of the week and a further period of 24 hours overtime may be worked during such days. In exceptional cases, additional overtime may be worked by agreement between the employer and the employees.

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(f) Any employee who, having worked during the ordinary working hours on any day or shift is called upon to continue work in overtime, without having received on the previous day or shift, notice thereof, shall be paid an allowance of $14.10 per meal or shall be supplied by the employer with a reasonable meal in lieu of such payment.

(g) Penalty rates for overtime shall be calculated on the ordinary rate of wage.

PROVIDED that for dunnagers overtime is calculated at double the ordinary time rate for a shipwright.

(h) Apprentices shall not be required to work during other than ordinary hours on any holidays without their consent.

(i) An employee working overtime shall be allowed a crib time of 30 minutes without deduction of pay after each four hours of overtime worked, if the employee continues work after such crib time.

Unless the period of overtime is one and a half hours or less, an employee before starting overtime after working a full ordinary shift shall be allowed a meal break of 30 minutes, which shall be paid for at ordinary rates. If a meal break is not taken and overtime exceeds one and one half hours, a paid meal break of 30 minutes shall be taken before continuing and the first break paid for at ordinary rates. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand.

PROVIDED that the employee shall not be required to make any payment in respect of any time allowed in excess of 30 minutes.

(j) Where the employer and the employee agree, time off in lieu of overtime at the penalty equivalent may be taken in lieu of overtime payments. If the agreed time off in lieu of overtime is not taken within 28 days, payment at the overtime equivalent will be made. This payment is to be made in accordance with normal pay procedures.

(k) When overtime work is necessary it shall whenever reasonably practicable, be so arranged that employees have at least nine consecutive hours off duty between the work of successive days.

An employee who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least nine consecutive hours off duty between those times shall, subject to this subclause be released after completion of such overtime until he has had nine consecutive hours off duty and shall be paid for the ordinary working hours that fall during such rest period.

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If on the instructions of the employer such an employee resumes or continues work without having had such nine consecutive hours off duty the employee shall be paid at double rates until the employee is released from duty for such period, and the employee shall then be entitled to be absent until the employee has had nine consecutive hours off duty and be paid for ordinary working hours falling during such rest period.

(l) In the event of any dispute arising from the implementation of the provisions of this clause, the matter shall be referred to the Tasmanian Industrial Commission and any decision shall be final and binding on all parties.

25. 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 months 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.

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(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.

(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.

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

(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.

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(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

(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.

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(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.

(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.

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(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.

(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.

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(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.

(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;

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(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.

(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.

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(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.

(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:

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(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.

(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).

26. PAYMENT OF WAGES

(a) Pay Day and Methods

(i) On the first pay day occurring during his employment, an employee shall be paid the wages that are due to him up to the completion of his work on the previous day.

(ii) All wages, allowances and other monies due shall be paid weekly and no later than Wednesday each week by cash, or where the employer and the majority of employees and the relevant unions at an establishment agree, by electronic funds transfer, this shall be at no cost to the employee, up to a maximum of two transactions per week including the original.

(iii) Where electronic/direct banking is agreed the employees may elect to have their monies deposited into two accounts.

(iv) An existing employee who believes genuine hardship will be incurred may make application for exemption. Where this occurs, the employer and the appropriate union will confer with the intent to resolving the hardship or agreeing to other arrangements.

(v) Waiting Time Penalties

An employee kept waiting for his wages on pay day for more than a quarter of an hour after the usual time for ceasing work shall be paid at overtime rates after that quarter of an hour, with a minimum of a quarter of an hour until wages are paid in full. This applies to all methods of payment of wages.

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(vi) Employer Responsibility

It is the responsibility of the employer to have the details of payment of wages, account number(s) and monies to cover wages by either EFT or Direct Deposit to the appropriate financial institution to enable payment as per this clause regardless of the method used by transferring of such details from pay office to financial institution.

(vii) **PROVIDED** that in any week in which a holiday falls on a Friday wages accrued shall be paid on the previous Wednesday.

PROVIDED FURTHER that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.

(viii) The employer shall not keep more than two days' wages in hand.

(b) Pay Packet Details

Particulars of details of payment to each employee shall be included in the envelope including the payment, or in a statement handed to the employees at the time payment is made and shall contain the following information:

(i) date of payment;

(ii) period covered by such payment;

(iii) the amount of wages paid for work at ordinary rates;

(iv) the number of hours paid at overtime rates and the amount paid therefore;

(v) the amount of allowances or special rates paid and the nature thereof;

(vi) the gross amount of wages and allowances paid;

(vii) the amount of each deduction made and the nature thereof;

(viii) the net amount of wages and allowances paid;

(ix) any annual holiday payments;

(x) superannuation.

(c) Payment on Termination

All wages, allowances and other monies due shall be paid in full no later than cessation of work on the final day of work.

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(d) Employee Terminating

Where an employee gives notice in accordance with Clause 36 - Termination of Employment of this award, and monies due are not paid on termination, the employer shall have two working days to send monies due by registered post.

PROVIDED that if the monies are not posted within that time then time spent waiting beyond the two working days shall be paid for at ordinary rates, such payment to be at the rate of eight hours per day up to a week's pay when the right to waiting time shall terminate.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

(e) Employer Terminating - Daily Penalties

Where an employer gives notice in accordance with Clause 36 - Termination of Employment of this award, all monies due shall be paid at termination; where this is not practicable the employer shall forward the monies due by registered post within two working days of termination and shall pay waiting time up to the time of posting at the rate of eight hours ordinary time per day up to a maximum of one week's pay.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

27. PERSONAL LEAVE

(a) The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in subclause (j) - Casual Employees – Caring Responsibilities.

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.

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(b) Amount of Paid Personal Leave

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

(1) due to personal illness or injury; or

(2) 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.

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

(iii) An employee shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of 10 days of ordinary working time;

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

(c) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (b)(iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal 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 personal leave prescribed in respect of that year.

(d) 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.

(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), beyond the limit set out in paragraph (f)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(g) Employee Must Give Notice

An 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 the absence.

(h) Evidence Supporting Claim

(i) An employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he 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 – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (g) and (h) casual employees 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 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.

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.

28. POSTING OF AWARD

A copy of this award, with all variations thereof, shall be posted and kept posted by the employer in a prominent place on the employer's premises accessible to the employees.

29. POSTING OF NOTICE

An employer shall not prevent an official of the union authorised in writing in that behalf, from posting on an employer's premises or job a copy of any official notice of the union.

PROVIDED that such notice is of reasonable size.

30. RIGHT OF ENTRY

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

31. SATURDAY AND SUNDAY WORK

For all work performed on Saturday and Sunday, payment shall be made at the rate of double time.

32. SETTLEMENT OF DISPUTES

(a) Where an employee has submitted a request concerning any matter directly connected with his employment to a foreman or a more senior representative of management and that request has been refused, the employee may if he so desires, ask the union delegate to submit the matter to management, and the matter may then be submitted by the union delegate to the appropriate representative of the employer concerned.

(b) If not settled at this stage, the matter may be formally submitted by the secretary of the union to the employer.

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(c) If not settled at this stage, the matter may be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of an association of employers as the employer may desire.

(d) If the matter is still not settled, it may be submitted to the Tasmanian Industrial Commission.

(e) Where the above procedures are being followed, work shall continue normally. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

33. SHIFT WORK

Where shifts are worked, not less than three successive working afternoons or nights on shift shall constitute shift work and shall be paid for at the rate of time and a half for the first eight hours and double time thereafter until the employee ceases work.

34. SPECIAL RATES

In addition to the rates prescribed in Clause 8 - Wage Rates the following special allowances shall be paid, but such extra rates shall not be subject to penalty rates for overtime, Sunday or holiday pay, or shift work:

(a) Wet places, i.e. any place where an employee's clothing or boots unavoidably become saturated, $0.45 per hour.

PROVIDED that this extra rate shall not be payable to an employee who is provided by the employer with suitable protective clothing and/or footwear.

PROVIDED FURTHER that any employee who becomes entitled to his extra rate shall be paid such extra rate for such part of the day or shift as he is required to work in wet clothing or boots.

(b) Confined spaces, i.e., a small compartment or place to which access is through a manhole or similar opening or when work is done in a stooping or otherwise cramped or uncomfortable position, $0.54 per hour extra whilst so engaged.

PROVIDED that when a ship's hold is plugged and entry is through the Booby Hatch, an amount of $0.56 per hour shall be paid to employees for work performed in ships' holds and decks, or when 'black' hatches are required to be worked on all decks.

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(c) (i) Dirty Work - Employees who are required to work on repairs in smoke boxes, uptake, funnel, flue, furnace, or combustion chambers of boilers or on machine sanders or in oil tanks, previously used dunnage or who are required to handle insulwool or on work which the management agrees is of an unusually dirty of offensive nature, shall be paid $0.45 per hour extra.

(ii) Acid Work - Employees who are required to work in acid tanks or inside acid retorts shall be paid $1.15 per hour extra.

(d) Employees who in the course of their employment are required to handle silicate of cotton, coal, dust, slag, wool, alfol, charcoal, fibreglass, pumice, lamp black, calcine, pitch-blend, pipe clay, soda ash, or in the laying of corticene involving the fixing of it to decks by the use of tallow and resin solution or other adhesive medium, shall be paid $0.45 per hour extra.

(e) Employees working amongst frozen cargo or in temperatures of less than 2.2 degrees Celsius (in freezing room) shall be paid an additional amount of $0.40 per hour extra.

(f) Where the circumstances arise wherein a class of employee mentioned in this award is required to perform work of a like nature or under the same conditions as other classes of waterfront employees and a special rate for such work has been determined by the Australian Industrial Relations Commission or Board of Reference, the extension of such payment shall be made to employees mentioned in this award by application to the Tasmanian Industrial Commission. In the event of a dispute arising in relation to the provisions of this subclause, the matter may be referred to the Tasmanian Industrial Commission for adjudication and the decision thereon shall be final and binding.

(g) Rates prescribed in this clause are not cumulative, and where an employee is engaged on work for which more than one special rate is prescribed, the employee shall be entitled to only one, i.e., the highest, for the disabilities so prevailing.

35. SUPERANNUATION

(a) Contribution

(i) The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

(ii) An employer shall make an occupational superannuation contribution for all eligible employees (as defined) equivalent to the amount prescribed by the *Superannuation Guarantee Charge Act 1992* of ordinary time earnings (as defined) into one of the following funds:-

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(1) TASPLAN (as defined);

(2) Superannuation Trust of Australia scheme established by Trust Deed;

(3) Construction and Building Unions Superannuation Scheme established by Trust Deed; or

(4) Any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause.

(iii) Contributions to the fund shall be made by the employer on behalf of an eligible employee on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

(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 paragraph (a)(ii) of this clause paid into the fund known as C.I.S. Superannuation Deed B R 1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

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

'Eligible Employee' shall mean an employee for whom a classification appears in this award whether employed on a full-time or casual basis.

'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 approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(c) Cessation of Contributions

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

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(d) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer in accordance with the provisions of the *Industrial Relations Act 1984*.

36. TERMINATION OF EMPLOYMENT

(a) In the case of employees engaged by the week the following provisions shall apply:

(i) Subject to the provisions of paragraph (ii) hereof a week's notice of the termination of engagement shall be given by either side or one week's wages shall be paid or forfeited in lieu thereof. Notice may be given on any day during the week to terminate the engagement whether on the corresponding day of the following week, or on any later day of the following week.

(ii) The employer may dismiss any employee summarily without notice for malingering, idling, inefficiency, neglect of duty including going slow, or misconduct, whereupon he shall pay the employee's wages up to the time of dismissal.

(b) In the case of employees engaged for dunnaging or as casuals, one hour's notice of the termination of the engagement shall be given on either side or one hour's pay shall be paid or forfeited in lieu thereof. In the case of the notice being given by the employer, such hour shall be allowed to the employee to gather, clean, pack and transport his tools to this home.

37. TOOLS

Employees shall provide all hand tools including auger bits up to 1-inch diameter and twist drills up to 1/2-inch diameter and shall be paid a tool allowance of $11.50 per week which sum shall not be taken into account in the computation of overtime and other penalty rates.

38. TRAVELLING TIME

(a) When an employee is required to work at a place other than his usual place of work he shall be paid his ordinary rate of wage for all time reasonably occupied in travelling to and from the place at which he is so required to work in excess of the time ordinarily occupied in travelling to and from his usual place of work. All fares necessarily incurred in so doing shall be paid by the employer.

(b) When an employee is required to work beyond a time when public transport is available, the employer shall be required to provide transport, or meet the cost of transport to the employee travelling to his home. Where an employee uses his own means of transport, he shall be paid a distance allowance of 27.5 cents per kilometre travelled on his return to home by the most direct road route.

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(c) Where an employee is required to work at a distance of 40 kilometres or more away from the headquarters of the employer and his work concludes on or after 10.00 p.m., the employer shall reimburse the employee for expenses incurred in meeting the cost of overnight accommodation.

James P McAlpine
COMMISSIONER

23 July 2007