

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.23 application for award or variation of award

Tasmanian Trades and Labor Council

(T13471 of 2009)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2009 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$12.00 per week - wage related allowances to be increased by 1.9% – meal allowance increased to \$15.40 - Supported wage increased to \$71.00 - State Minimum Wage rate determined at \$558.10 - s.35(1)(b) – operative date ffpp 1 August 2009 - Wage Fixing Principles set aside in part

ZINIFEX HOBART SMELTER ENTERPRISE AWARD

ORDER BY CONSENT –

**No 1 of 2009
(Consolidated)**

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

PART I - APPLICATION AND OPERATION OF THE AWARD

1. TITLE

This award shall be known as the "Zinifex Hobart Smelter Enterprise Award".

2. INDEX

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3. SCOPE

This award is established in respect of the production of:

electrolytic zinc, zinc oxide, acid and other products of zinc ores and aluminium sulphate at Zinifex Hobart Smelter's operations at the Risdon Plant.

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2009.

5. AWARD INTEREST

- (a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- (i) the Australian Municipal, Administrative, Clerical and Services Union;
 - (ii) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;
 - (iii) The Australian Workers' Union, Tasmania Branch;
 - (iv) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch;
 - (v) the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.
- (b) The following employer organisation has an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- the Australian Mines and Metals Association (Incorporated).
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:
- the Tasmanian Chamber of Commerce and Industry Limited.
- (d) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:
- the Tasmanian Trades and Labour Council.

6. SUPERSESSION

This award incorporates and supersedes the Zinifex Hobart Smelter Enterprise Award No 1 of 2008 (Consolidated).

7. GENERAL DEFINITIONS

'Boiler Operators Certificate' shall mean certification provided by the Standards Sector of the Workplace Standards Authority.

'Employee Development Scheme' shall mean a process of career progression according to demonstrated competency in skills contained within training modules. As the employee demonstrates the ability to perform skills contained within a training module he/she is credited with the points value of that module, or formal qualification. Once an employee satisfies the criteria for each grade he/she will progress to that grade and receive the pay rate for that grade.

'Formal qualification' shall mean a document attesting the fulfilment of conditions contained in the syllabus of a course of formal instruction by an accredited provider.

'Individual Career Statement' shall mean a record of all skills from the Employee Development Scheme for which the employee has been assessed as competent. Employees are required to perform all skills contained within their Individual Career Statement. The level of skill is expressed as either a points level or formal qualification which determines each employee's grade.

'Points' shall mean a numerical unit of value allocated to a training module, within the Production Service Person Matrix or Trade/Technical Training Matrix.

'Production/Service Person Training Matrix' and **'Trade/Technical Training Matrix'** shall mean a syllabus containing all of the training modules available to a particular stream within the Production/Service Person or Trade/Technical classification.

'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.

PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. WEEKLY EMPLOYMENT

- (a) Employment shall be by the week and, shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the case may be.
- (b) Subclause (a) above shall not affect the right of the employer to dismiss any employee without notice for misconduct, and in such cases the wages shall be paid up to the time of dismissal only; or to deduct payment for any day the employee cannot be usefully employed because of any strike or through any break-down in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.
- (c) Where an employee has given or been given notice as aforesaid he shall continue in his employment until the date of the expiration of such notice. Any employee who, having given or been given notice as aforesaid, without reasonable cause (proof of which shall lie on him) absents himself from work during such period, shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him/her within that period.

2. STAND DOWN

The right of the Company to deduct payment for any day an employee cannot be usefully employed because of a strike is subject to the following conditions:

- (a) The Company shall notify the employee of its intention to exercise the above right and the employee shall be deemed to be stood-down until he/she is advised to resume work, which may be done verbally or in writing, or by public notice.
- (b) An employee who is stood-down shall be considered for all purposes of this award, as having maintained continuity of employment notwithstanding such standing-down.
- (c) An employee who is stood-down may, at any time during the stand-down period, terminate his/her employment without notice. Such termination will operate forthwith.
- (d) An employee who terminates his/her employment under paragraph (c) above shall be treated as if his/her employment had been terminated without default of the employee.
- (e) An employee who is stood-down shall be at liberty to take alternative employment.

- (f) Save and except an employee who is a member of an organisation engaged in a strike at any establishment of the Company, an employee stood-down for a period of more than one week who has exercised the right to take other employment, shall be entitled to work out in such other employment, after notification of resumption of operations, notice of up to one week provided he/she notifies the Company of his/her so doing.
- (g) An employee whom the Company proposes to stand-down may elect to take for the period of the stand-down only, any annual leave to which he/ she is entitled, or which is accruing to him/her, and upon such election being exercised, the employee's annual leave shall be reduced accordingly.
- (h) The Company shall not deduct payment for any day prescribed by this award as a public holiday, which occurs during the period of stand-down of an employee (other than an employee who is a member of an organisation engaged in a strike at any establishment of the Company), except to the extent that such employee has become entitled to payment for the holiday in other employment. An employee claiming payment for a holiday shall advise the Company of details of any other employment during the stand-down period and the remuneration received therein. If requested by the Company, this shall be in the form of a Statutory Declaration.

3. DUTY TO OBEY LAWFUL INSTRUCTIONS

- (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification and career path structure of this award provided that such duties are not designed to promote deskilling.
- (b) An employer may direct an employee to carry out such agreed duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- (c) Any direction issued by an employer pursuant to paragraphs (a) and (b) hereof, shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4. REQUIREMENT TO WORK REASONABLE OVERTIME

An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

PART III - WAGES AND RELATED MATTERS

1. WAGE RATES

The amounts set out hereunder shall be the minimum rates payable to adult employees therein named:

DIVISION 1 - TRADES/TECHNICAL PERSONS

	Base	Safety Net Adjustment	Amount per week of 38 hours
	\$	\$	\$
Grade 1	458.90	234.70	693.60
Grade 2	481.15	232.70	713.85
Grade 3	496.20	232.70	728.90
Grade 4	512.60	230.70	743.30
Grade 5	535.25	232.70	767.95
Grade 6	557.40	232.70	790.10
Grade 7	573.90	232.70	806.60
Grade 8	594.40	232.70	827.10
Grade 9	614.90	232.70	847.60
Grade 10	635.40	232.70	868.10

DIVISION 2 - PRODUCTION SERVICE PERSONS

	Base	Safety Net Adjustment	Amount per week of 38 hours
	\$	\$	\$
Grade 0	386.00	232.70	618.70
Grade 1	395.10	232.70	627.80
Grade 2	404.20	232.70	636.90
Grade 3	414.10	234.70	648.80
Grade 4	433.50	234.70	668.20
Grade 5	445.40	234.70	680.10
Grade 6	457.30	234.70	692.00
Grade 7	469.10	234.70	703.80

DIVISION 3 - APPRENTICES

The minimum wage rates for apprentices shall be:

Four year term –

	% of Grade 1 Tradesman's Wage
First year	38
Second year	55
Third year	75
Fourth year	95

Apprentices will also receive a supplementary payment of \$38.60 per week.

2. CLASSIFICATION DESCRIPTORS

PRODUCTION/SERVICE PERSONS CLASSIFICATION

'Production/Service Person Grade 0' shall mean an employee who has acquired less than 100 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 1' shall mean an employee who has acquired 100 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 2' shall mean an employee who has acquired 250 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 3' shall mean an employee who has acquired 430 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 4' shall mean an employee who has acquired 680 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 5' shall mean an employee who has acquired 880 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 6' shall mean an employee who has acquired 1,080 points from the relevant Production/Service Person Training Matrix.

'Production/Service Person Grade 7' shall mean an employee who has acquired greater than 1,240 points from the relevant Production/Service Person Training Matrix.

TRADES/TECHNICAL PERSON CLASSIFICATIONS

'Trades/Technical Person Grade 1' shall mean an employee who is employed in a recognised trade classification and who has less than 175 points from the relevant Trade/Technical Training Matrix, or less than 'A' modules from the appropriate Associate Diploma course.

'Trades/Technical Person Grade 2' shall mean an employee who has gained 175 points from the relevant Trade/Technical Training Matrix, or 'B' modules from the appropriate Associate Diploma course.

'Trades/Technical Person Grade 3' shall mean an employee who has gained 350 points from the relevant Trade/Technical Training Matrix, or 'C' modules from the appropriate Associate Diploma course.

'Trades/Technical Person Grade 4' shall mean an employee who has gained 525 points from the relevant Trade/Technical Training Matrix, or 'D' modules from the appropriate Associate Diploma course.

'Trades/Technical Person Grade 7' shall mean an employee who has gained 1080 points from the relevant Trade/Technical Training Matrix, or 'G' modules from the appropriate Associate Diploma course.

'Trades/Technical Person Grade 8' shall mean an employee who has gained 'H' modules from the relevant Tertiary Institution's Training Syllabus, defined by a formal qualification or the equivalent level of accredited training.

'Trades/Technical Person Grade 9' shall mean an employee who has gained 'I' modules from the relevant Tertiary Institution's Training Syllabus, defined by a formal qualification or the equivalent level of accredited training.

'Trades/Technical Person Grade 10' shall mean an employee who has gained 'J' modules from the relevant Tertiary Institution's Training Syllabus, defined by a formal qualification or the equivalent level of accredited training.

3. SERVICE AND EXPERIENCE PAYMENT

In addition to the wage rates prescribed in Part III, Clause 1 - Wage Rates, and allowances prescribed in Part IV, Clause 1 - Shift Allowance, Clause 2 - Tool Allowance, and Clause 3 - Direct Deposit Allowance, all employees mentioned herein shall, subject to continuous service, be paid the following amounts:

- (a) On completion of 26 weeks' service - \$5.30 per week extra.
- (b) On completion of 1 year's service - \$6.70 per week extra.
- (c) On completion of 2 years' service - \$15.40 per week extra.
- (d) On completion of 5 years' service - \$19.80 per week extra.
- (e) On completion of 10 years' service - \$37.80 per week extra.
- (f) On completion of 15 years' service and thereafter - \$39.40 per week extra.

Payment of the amounts prescribed shall be on the basis of a 38-hour week and when a greater or lesser number of hours than 38 are worked, payment shall be made pro rata to the hours worked.

Payments of the amounts prescribed shall continue to be made during periods of annual leave or other absences approved by the employer during which ordinary wages are paid.

Continuous service for the purpose of this clause means continuous service with the recognised employer in the industry for which this award is established.

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 division) 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:

"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.

"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.

"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.

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

(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 \$71 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 division, 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.
- (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 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$71 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.
- (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.

5. WORKING WEEK AND PAYMENT OF WAGES

- (a) The working week shall commence at 11.45 pm on Tuesday and finish at 11.45 pm on Tuesday next following.
- (b) Wages shall be paid fortnightly; where pay day falls on a public holiday payment shall be made on the next/previous ordinary working day, any consequential adjustments to be made in the next pay.

- (c) Where an employee is kept waiting for his/her pay on pay day for more than a quarter of an hour after the usual ceasing time he/she shall be paid at overtime rates for the time he/she is kept waiting.
- (d) Where an employee's services are terminated within the normal pay period he/she shall be paid the wages due to him/her before leaving the job or within one day from the date of such termination.

6. LATECOMERS

Notwithstanding anything elsewhere contained in this award an employer may select and utilise for timekeeping purposes any fractional or decimal proportion of an hour (not exceeding quarter of an hour) and may apply such proportion in the calculation of the working time of employees who without reasonable cause promptly communicated to the employer, report for duty after their appointed starting times or cease duty before their appointed finishing times.

An employer who adopts a proportion for the aforesaid purpose shall apply the same proportion for the calculation of overtime.

7. MINIMUM WAGE

- (a) Minimum Wage

No employee shall be paid less than the minimum wage.

- (b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Clause 4 - Supported Wage System is \$558.10 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2009 State Wage Case Decision (T13471 of 2009) and all previous safety net and state wage case adjustments.

PART IV - ALLOWANCES

1. SHIFT ALLOWANCE

- (a) Regular shift workers included in Part III, Clause 1, Divisions 1, 2 and 3 hereof shall be paid a shift allowance of \$2.80 per week of 38 hours. This allowance shall be taken into consideration in the computation of overtime and other penalty rates and shall be included in payments for leave entitlements.
- (b) Regular shift workers, whilst performing any afternoon or night shift or part thereof, shall receive an additional allowance at the rate of 15 percent of \$584.50 per week of 38 hours, less the sum of \$2.80 per week prescribed in subclause (a) of this clause. This additional allowance shall not be taken into consideration in the computation of overtime and other penalty rates but shall be included in payments for leave entitlements.

2. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the Industrial and *Commercial Training Act 1985*, shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$5.10 per week. The exceptions being carpenters and carpentry apprentices (after the first year of employment as such) where such amount shall be not less than \$12.30 per week.

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

3. DIRECT DEPOSIT ALLOWANCE

All employees whose wages are paid by direct deposit shall be paid a flat weekly allowance of \$0.40, such allowance to be compensation for Government charges imposed by financial institutions on account transactions.

4. "A" GRADE LICENCE

Employees classified in Part III, Clause 1, Division 1 - Trades/Technical Persons who are holders of an 'A' Grade licence shall be paid an additional allowance of \$19.80 per week.

5. SPECIAL RATES

(a) High Work

- (i) Employees engaged in the erection, repair and/or maintenance of plant buildings and structures at a height of 15 metres or more directly above the nearest horizontal plane shall be paid at the rate of \$2.65 per day in addition to their ordinary rates, provided always that this provision shall not apply to riggers, linesmen or to employees working on a swing scaffold and/or bosun's chair.
- (ii) Employees working on a swing scaffold and/or bosun's chair, irrespective of height, shall be paid at the rate of \$2.65 per day or shift in addition to their ordinary rates; provided always that this provision shall not apply to riggers.

(b) Hot Places

In addition to the wages prescribed in this award, the following special rates and allowances shall be paid for work in hot places. Working for more than one hour in the shade in places where the temperature is raised by artificial means to between 46 and 54 degrees Celsius, \$0.42 per hour extra. In places where the temperature exceeds 54 degrees Celsius, \$0.55 per hour extra. Where the work continues for more than 2 hours in temperatures exceeding 54 degrees Celsius, employees shall also be entitled to 20 minutes rest after every 2 hours' work without deduction of pay. The temperatures shall be decided by the foreman of the work after consultation with the employees who claim the extra rate.

PART V - HOURS OF WORK, PENALTY PAYMENTS, SHIFT WORK AND OVERTIME

1. HOURS OF WORK

Day Workers

- (a) For all day work employees the ordinary hours of work shall be 38 per week to be worked as an average of 38 per week within a twenty-eight day cycle, Monday to Friday, inclusive between the hours of 7.45 am and 4.20 pm, exclusive of crib time of 35 minutes, to be taken between 12.30 pm and 1.05pm. A morning tea break of 20 minutes including walking and washing up time will be allowed from 10.00 am.
 - (i) Subject to mutual agreement between employees and their supervisor ordinary hours may commence at 5.45 am but not extend beyond 5.45 pm.
 - (ii) Crib time and morning tea time will be taken at an agreed time to satisfy the rearranged start and finish times.

Shift Workers

- (b) For shift workers the ordinary hours of work shall average 38 per week and shall not exceed 152 hours in 28 consecutive days; provided that by agreement a roster system may operate on the basis that the weekly average of 38 working hours is achieved over a period exceeding 28 consecutive days.
- (c) Subject to the following conditions, such shift workers shall work at such times as the employer may require:
 - (i) A shift shall consist of not more than 8 hours inclusive of crib time.
 - (ii) Except at the regular changeover of shifts, an employee shall not be required to work more than one shift in each 24 hours.
 - (iii) 30 minutes shall be allowed to shift workers each shift for crib, which shall be counted as time worked.
- (d) By agreement between the employer, union or unions concerned and the majority of employees in the section or sections concerned, ordinary hours not exceeding twelve on any day may be worked subject to:
 - (i) proper health and monitoring procedures being introduced;
 - (ii) suitable roster arrangements being made;
 - (iii) proper supervision being provided;
 - (iv) the terms and conditions of each proposed shift arrangement will be registered in the Tasmanian Industrial Commission; and

(v) prior to discussions commencing, all parties shall be duly notified.

These terms and conditions may provide for trialing and testing of such an arrangement.

(e) Notwithstanding the conditions set out in the following:

Part VI, Clause 2	-	Holidays with Pay
Part V, Clause 4	-	Holiday Work
Part V, Clause 1	-	Hours of Work
Part V, Clause 5	-	Overtime
Part V, Clause 2	-	Saturday Work
Part V, Clause 3	-	Sunday Work

employees working in excess of 8 ordinary hours per day by agreement, the terms and conditions in relation to the matters set out in this clause shall be included in an agreement registered with the Tasmanian Industrial Commission.

2. SATURDAY WORK

For work done on Saturdays (i.e. from 11.45 pm on Fridays to 11.45 pm on Saturdays) by shift workers, the minimum payment that may be made shall be at the rate of time and a half.

Payment for Saturday work for Day Workers is in accordance with Part V, Clause 5 - Overtime.

3. SUNDAY WORK

- (a) For work done on Sundays (i.e., from 11.45 pm on Saturday to 11.45 pm on Sundays) by Day Workers, including shift workers, the minimum payment that may be made shall be at the rate of double time.
- (b) An employee not engaged in continuous shift work who works on a Sunday or a public holiday and (except for meal breaks) immediately thereafter continues such work, shall, on being relieved from duty, be entitled to be absent until he/she has had 10 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

Note - The provisions of the foregoing Clause 2 - Saturday Work and Clause 3 - Sunday Work, are not to be used as a precedent before other wage-fixing tribunals.

4. HOLIDAY WORK

- (a) All work done on any of the holidays specified in Part VI, Clause 2 - Holidays with Pay, hereof shall be paid at the rate hereunder prescribed:

Day Workers - Double time and a half
Shift Workers - Double time

- (b) Employees other than shift workers shall not be called upon to work on the foregoing public holidays unless the work to be performed is of a special and necessary character or in a continuous process.

Payments under this subclause shall be included in the wages payable for the current pay period.

- (c) Payment for the holidays mentioned in Part VI, Clause 2 - Holidays with Pay, subclause (a) hereof, 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/she had been at work.
- (d) Payment to an employee for work performed on holidays mentioned in Part VI, Clause 2 - Holidays with Pay, subclause (a) hereof, shall be at the rates prescribed elsewhere in this award.
- (e) Notwithstanding the previous provisions of this clause an employee who refuses to work when required to do work of a special and necessary character or in a continuous process shall forfeit his/her right to any payment for the holiday on which he/she fails to work.

5. OVERTIME

Award Employees (excluding Part X - Waterside Workers)

Day Workers

- (a) For all work done by day workers before or after the times of the day mentioned in Part V, Clause 1 - Hours of Work hereof, or on Saturday, overtime shall be paid at the rate of double time.

Shift Workers

- (b) Shift workers shall be paid at the rate of double time for all time of duty beyond 8 hours per day, except where the excess time of duty is:
- (i) by arrangement between the employees themselves;
- (ii) for the purpose of effecting the customary rotation of shifts and of reliefs.

- (c) Shift work shall be rostered for periods of not less than a fortnight, but shifts may be changed from time to time as may be necessary for the operation of the works.

PROVIDED that:

- (i) unless an employee is given 48 hours' notice of change of shift; or
- (ii) unless not less than 7 clear days' notice is given of change of employees' days off,

overtime at the rate of double time shall be paid for work performed on such changed shift or day off, irrespective of the number of hours otherwise worked in any fortnight.

- (d) A shift worker required to work overtime immediately after working ordinary hours shall be paid a minimum of one hour's work at the appropriate rate provided that except in the case of unforeseen circumstances arising the employee shall not be required to work the full hour if the job which he/she is held back to perform is completed within a shorter period.

Overtime - General

- (e) Except as otherwise provided in subclause (f) hereof, in computing overtime each day's or shift's work shall stand alone. For such purpose a day shall be deemed to commence at 11.45 pm.

Notwithstanding the foregoing, a shift worker (whether or not he/she has been given notice of change of shift pursuant to subclause (c) of this clause) who concludes work of 8 hours on his/her regularly rostered shift at 11.45 pm and is then required to immediately commence his/her changed rostered shift commencing at 11.45 pm and finishing at 7.45 am shall be paid double the ordinary rate for such second consecutive shift.

- (f) An employee who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had 10 consecutive hours off duty without loss of pay for ordinary time of duty occurring during such absence.

If, on the instructions of his/her employer, any employee resumes work without having had such 10 hours off duty, he/she shall be paid at double rates until he/she is relieved from duty to take such rest period and he/she shall then be entitled to be absent until he/she has had 10 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

PROVIDED that time off duty without loss of pay shall not be regarded as time worked for the computation of overtime or other penalty rates.

In the case of day workers, such rest period shall be exclusive of crib time set out in Part V, Clause 1 - Hours of Work, subclause (a) hereof.

- (g) Where an employee continues to work on the instructions of his/her employer after working for 4 hours or more at overtime rates before his/her ordinary starting time, he/she shall be paid at double time for his/her work until he/she shall have been relieved for at least 10 hours.

PROVIDED that he/she shall not be entitled to payment for any such rest period.

- (h) An employee recalled to work overtime after leaving his/her employer's works shall be paid a minimum of 4 hours' work at the appropriate rate for each time he/she is so recalled.

PROVIDED that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full 4 hours if the job he/she was recalled to perform is completed within a shorter period.

- (i) Subject to any custom now prevailing under which an employee is required to hold himself/herself in readiness for a call back, an employee required to hold himself/herself in readiness to work after ordinary hours, shall, until released, be paid standing-by time at ordinary rates from the time from which he/she is so to hold himself/herself in readiness.

Meal Period and Allowances

- (j) For work done by day workers during the normal crib time and thereafter until a meal break is allowed, payment shall be made at the rate of double time.
- (k) An employee shall not work for more than 5 hours without a break for a meal.
- (l) An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each 4 hours of overtime worked, if the employee continues to work after such crib time.

An employer and the employee may agree to any variation of this provision to meet the circumstances of the work in hand.

- (m) Before starting overtime immediately after working ordinary hours, a meal break of 20 minutes shall be allowed without deduction of pay, unless the period of overtime is 1 1/2 hours or less. An employer and the employee may agree to any variation of this provision to meet the circumstances of the work in hand.
- (n) An employee required to work overtime for more than one and one half hours without being notified the day before that the employee will be so required to work, shall be supplied with a meal by the employer or paid \$15.40 for each meal.
- (o) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime, the employee shall be paid \$15.40 for each meal.

Provisions covering changes between Day and Shift Work

- (p) When day workers are rostered to and perform shift work for 5 or more successive shifts there shall be added to the rates prescribed for day-work the shift allowance prescribed in Part IV, Clause 1 - Shift Allowance thereof.
- (q) When day workers work less than 5 successive shifts, overtime at the rates prescribed for day workers shall be paid instead of the allowance for shift work.
- (r) When a day worker is required to change from day work to night shift commencing at 11.45 pm on the same day he/she shall be allowed to cease work at 3.45 pm without loss of pay for ordinary hours of employment on that day.

PROVIDED that the time off duty without loss of pay shall not be regarded as time worked for the purpose of computation of overtime or other penalty rates.

- (s) When a day worker is required to change to shift work he/she shall be given a minimum of 48 hours notice of such change. Where a lesser period of notice is given the employer shall either instruct the employee to work his/her ordinary day work hours, or pay him/her for such ordinary hours occurring but not worked within the period of such minimum notice.

Transport of Employees Required to Work Overtime

- (t) An employee recalled to work overtime after leaving his/her employer's premises shall be provided by the employer with transport to and from his/her place of work before commencing and after concluding such overtime.
- (u) Where an employee is required to work overtime or an additional shift immediately before or following on from his/her ordinary work or rostered shift, he/she shall be provided by the employer with transport to or from his/her home, notwithstanding that he/she may have been notified previously of the requirement to work such overtime.
- (v) Where an employee is required to work organised overtime at weekends or holidays, and that overtime commences and finishes at normal working times, and normal transport is available at the start and finish of such overtime, then the provisions of subclauses (w) and (x) hereof shall not apply.
- (w) Where the time occupied in transporting an employee to his/her home after working overtime exceeds 15 minutes, such additional time shall be paid for at the appropriate plant overtime rate.

- (x) As an alternative to the employer providing transport in accordance with the provisions of subclauses (t), (u) and (v) hereof, the employee concerned may elect to use his/her own vehicle, in which case he/she shall be paid a travelling allowance of 27.5 cents per kilometre for the actual road distance involved in travelling by the most direct route and such travelling allowance shall be limited to a maximum of 32 kilometres on each occasion of work performed as aforesaid.
- (y) The foregoing provisions shall not apply to employees who, as an integral part of their job, are required to regularly work overtime immediately preceding or following their ordinary hours of work.

6. EXTRA RATES NOT CUMULATIVE

Extra rates prescribed in this award for overtime on Saturday, Sunday work or work performed on any of the statutory holidays prescribed by Part VI, Clause 2 - Holidays with Pay, subclause (a) thereof, (except those especially so prescribed in Part X- Waterside Workers), and for day workers who work on any of the statutory holidays prescribed in Part VI, Clause 2 - Holidays with Pay, subclause (a) thereof) are not cumulative so as to exceed the maximum of double time of the ordinary rate.

PART VI - LEAVE AND HOLIDAYS WITH PAY

1. ANNUAL LEAVE

(a) Period of Leave

(i) Day Workers

A period of 19 working days' leave shall be allowed annually after 12 months' continuous service (less the period of annual leave).

(ii) Shiftworkers

In addition to the leave hereinbefore prescribed, shiftworkers shall be allowed 5 working days' leave. For the purposes of this clause, a shiftworker is an employee who is rostered to work regularly on Sundays and/or holidays.

The total of annual leave entitlement and accrued leisure days for shift workers is 37 days per annum, and for Monday to Friday day workers is 32 days per annum. The aggregate of block leisure leave and annual leave must be taken in two parts, with neither part being less than 12 days.

Where an employee with 12 months' continuous service is engaged for part of the 12 monthly period as a shiftworker, he/she shall be entitled to have the period of annual leave hereinbefore prescribed increased by one day for each two months he/she is continuously engaged.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Part VI, Clause 2- Holidays with Pay hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

Notwithstanding the foregoing provisions, a shift worker shall have added to his/her period of annual leave one day for each statutory holiday which occurs during the period of his/her annual leave, whether or not such holiday is observed on a day which, but for such leave, would have been a rostered day off.

This shall not apply to a statutory holiday which is observed on a Saturday or on a Sunday.

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

(c) Broken Leave

The annual leave shall be given and taken in a continuous period, or if the employee and employer so agree, in 2 separate periods and not otherwise.

(d) Calculation of Continuous Service

For the purposes of this clause, service shall be deemed to be continuous notwithstanding:

- (i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) any absence from work on account of personal sickness, accident or on account of leave lawfully granted by the employer; or
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee.

In cases of personal sickness or accident or absence with reasonable cause, the employee to become entitled to the benefit of this subclause shall inform the employer, if practicable, within 24 hours of the commencement of such absence of his/her inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of his/her absence.

Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for the purpose of this clause unless the employer during the absence or within 14 days of the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

In calculating the period of 12 months' continuous service, any such absence as aforesaid shall not, except to the extent of not more than 91 days in a 12 monthly period in the case of sickness or accident, be taken into account in calculating the period of 12 months' continuous service.

(e) Payment in Lieu Prohibited

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

(f) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(g) Leave Allowed Before Due Date

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

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Part VI, Clause 2 - Holidays with Pay hereof.

(h) Payment for Period of Annual Leave

(i) Shift Workers

Each employee employed as a Regular Shift Worker in Part III, Clause 1 - Wage Rates, Divisions 1 or 2 thereof, shall be paid before going on annual leave, the amount of wage the employee would have received in respect of the ordinary hours which the employee would have worked in accordance with the employee's roster, or with the employee's projected roster.

(ii) Day Workers

Each employee employed as a Day Worker in Part III, Clause 1 - Wage Rates, Divisions 1 or 2 thereof, shall be paid before going on annual leave four weeks' wages except where such employee is employed in Shipping and Transport Division, in which case the employee shall be paid four weeks' wages calculated on the employee's average weekly earnings in respect of the ordinary hours worked during the relevant annual leave accrual period.

(iii) In addition each employee shall receive a loading of 17 1/2% on payments made under the provisions of Part III, Clause 3 Service and Experience Payment, for the period of annual leave.

Where the wage rate is relevant to the calculation of the payment for annual leave, the wage rate to be applied shall be determined by averaging wage rates paid to the employee concerned for ordinary hours worked in the immediately preceding 20 ordinary working days.

(i) Proportionate Leave on Termination of Service

If after 4 weeks' continuous service in any qualifying 12 monthly period an employee leaves their employment lawfully in accordance with the provisions of Part II, Clause 1, subclause (a) thereof, the employee shall be paid at the rate of wage as provided by subclause (h) above as follows:

- (i) Day Workers - 11.7 hours for each completed four weeks of continuous service.
- (ii) Shift Workers - 14.8 hours for each completed four weeks of continuous service.

Where an employee has given or been given one week's notice of termination and absents himself/herself from work during the period of notice in the manner prescribed in Part II, Clause 1 - Weekly Employment, subclause (c) thereof, in addition to the penalty therein prescribed the employee shall forfeit part of his/her leave entitlement such as to bring his/her forfeiture of leave and pay entitlements up to a maximum of one week in the aggregate.

Where an employee is summarily dismissed for misconduct or abandons his/her employment without giving notice he/she shall forfeit his/her leave entitlement.

2. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays: New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Notwithstanding the provisions of subclause (a) if the day on which a public holiday is observed falls on the rostered day off of a shift worker, such employee shall be paid his/her ordinary rate for the time he/she would have worked if the holiday were not his/her day off. This provision shall not apply to a public holiday which is observed on a Saturday or Sunday. For the purposes of this subclause, ordinary rate shall be that prescribed by Part III, Clause 1 - Wage Rates of this award for the occupation in which the employee is ordinarily engaged.

3. PERSONAL LEAVE

For employers who do not subsidise a sick or accident fund for the benefit of their employees, the provisions of this clause shall apply.

(a) Definitions

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

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (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.
- (iii) An employee 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.
- (iv) The 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 2 weeks of ordinary working time;
- (v) For the purpose of administering paragraph (iv) of this subclause an employer may within one month of this award coming into operation or within 2 weeks of the employee entering his/her employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she 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 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.

(d) 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.

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

(e) Employee Must Give Notice

The employee shall, within 48 hours of the commencement of such absence inform the employer of his/her 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

(f) Evidence Supporting Claim

- (i) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she 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.

(g) Personal Leave and Workers' Compensation

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

(h) 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 (e) and (f) are met.

4. BEREAVEMENT LEAVE

(a) Paid Leave Entitlement

An employee shall, on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandparent, de facto husband and/or wife, be entitled, upon application being made to, and approved by the employer, to leave up to and including the day after the funeral of such relative, and such leave shall be at ordinary rates of pay for a period not exceeding 24 working hours.

PROVIDED that no payment shall be made in respect of an employee's rostered days off. Such leave shall also apply to an employee who attends a funeral overseas of the abovementioned relatives.

Proof of such death, in the form of a Death Notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer.

PROVIDED FURTHER that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

(b) Unpaid Bereavement Leave

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

5. 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.
 - (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.
 - (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.

(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.
- (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.

(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.
- (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;
- (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 otherwise agreed between employee and employer, and consistent with the provisions of this clause

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

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

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

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

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

(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.

(I) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (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 (I)(i)(1).

PART VII - CONSULTATION AND DISPUTE RESOLUTION

1. CONSULTATIVE PROCEDURES

The parties to this award will establish a consultative mechanism and procedures appropriate to the size, structure and needs of Zinifex Hobart Smelter measures raised by the employer, employees or union or unions for consideration consistent with the objectives of Part VII, Clause 2 - Structural Efficiency herein, shall be processed through a consultative mechanism and procedures.

2. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increasing the efficiency and productivity of Zinifex Hobart Smelter.
- (b) Without limiting the rights of either the employer or a respondent union to arbitration, any other measure designed to increase flexibility on the Zinifex Hobart Smelter site shall be implemented subject to the agreement of the parties and subject to the following requirements:
 - (i) The parties will consider the implications of the proposed measures for existing on-site arrangements.
 - (ii) The majority of employees affected by the change must genuinely agree with the change.
 - (iii) The relevant union or unions must be a party to the agreement.

3. SETTLEMENT OF DISPUTES AND GRIEVANCES

The following procedures shall be followed when a matter arises which could lead to a dispute affecting the Company and/or its employees.

- (a) Where any grievance or claim arises the employee and/or delegate of the union involved will raise the matter directly with his/her immediate supervisor.

The supervisor will give an answer or a progress report to the employee and/or delegate by the end of the next ordinary working shift.

- (b) Where a grievance or claim is not resolved as set out above, the supervisor will notify the Divisional Manager before the end of that shift of a foreshadowed dispute, hereafter referred to as a dispute.

- (c) The Divisional Manager will discuss the dispute with the delegate in an endeavour to resolve the issue, and will give an answer or a progress report to the delegate by the end of his/her next ordinary working shift after the shift referred to in paragraph (b) hereof.
- (d) Whilst discussions are taking place in accordance with paragraph (a), (b), or (c) hereof, the accepted custom or practice (status quo) that existed prior to the grievance or claim arising will prevail and will remain in practice until the disputed issue is resolved.
- (e) Failing agreement the matter will be referred to the Manager, Human Resources or his/her Deputy who will notify the delegate of a mutually acceptable meeting date (or within five ordinary working days) which shall be convened for the purpose of resolving the dispute.

The delegate or employer may elect whilst the above procedures are taking place, to advise State Officials of the union involved in an endeavour to assist in the resolution of the dispute.

- (f) The delegate will not call a stop work meeting provided paragraphs (d) and (e) above are implemented.

In any event the delegate shall notify the Manager, Human Resources or his/her Deputy before calling a stop work meeting.

- (g) Failing agreement after following the above procedure the dispute may at the option of either party, be referred to the Tasmanian Industrial Commission.
- (h) The above procedures do not apply to claims, issues or disputes relating to genuine safety matters. In such matters the Company will undertake immediate investigations including discussions with the employee(s) and/or delegate(s) and/or officials of the union(s) involved.

Where the matter is not agreed and the union(s) decide(s) not to work in an area considered safe by the employer the matter shall be referred to the appropriate authority at the first available opportunity for determination.

- (i) General Claims, Issues and Disputes

The official(s) and delegate(s) of the union(s) involved will place the claim, issue or dispute before the Company's Employee Relations Group which will take all reasonable steps to reply as soon as possible.

Failing agreement, the claim, issue or dispute may be referred to the Tasmanian Industrial Commission, if the union(s) wants to pursue it further.

PART VIII - OCCUPATIONAL HEALTH AND SAFETY, TOOLS AND AMENITIES

1. DAMAGE TO TOOLS AND CLOTHING

Compensation to the extent of damage sustained shall be made where, in the course of work, clothing or tools are damaged or destroyed by fire or molten metal or through the use of corrosive substances.

PROVIDED that the employer's liability in respect of tools shall be limited to such tools of trade as are ordinarily required for the performance of the employee's duties.

PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS

1. AWARD REVIEW

The parties are committed to an on-going review of the terms of the Zinifex Hobart Smelter Enterprise Award.

The changes to the award may provide for more flexible working arrangements, more flexible hours of work, enhanced skill levels, and improved job satisfaction.

The process of award review will be consistent with the EZ Restructuring Agreement of 1988, as registered with the Tasmanian Industrial Commission.

2. RIGHT OF ENTRY OF UNION OFFICIALS

Right of entry to a duly accredited representative of a union party to this award shall be in accordance with the provisions of Section 77 of the *Industrial Relations Act 1984*.

PART X - WATERSIDE WORKERS

Employees engaged in the handling of cargoes on the wharf of the employer, and/or on shipboard, in the course of transit from or to the hoppers or stacks of the employer for the immediate purpose of loading or unloading overseas ships.

1. WAGES AND RELATED MATTERS

- (a) The minimum rate of wage which shall be paid to employees under this section of the award between the hours of 7.45 am and 3.45 pm on Monday to Friday inclusive shall be:
- (i) \$15.0929 per hour operative from the first full pay period to commence on or after 3 August 1998;
 - (ii) \$15.1718 per hour operative from the first full pay period to commence on or after 17 October 1998.
- (b) In addition to the wage rate prescribed in subsection (a)(i) hereof, the following additional amounts shall be paid to employees engaged on waterside work in the undermentioned classifications:

	Per Hour
	\$
Gantry crane drivers	1.5736
Leading Hands	1.7834
Fork lift truck drivers	0.5246

Such additional amounts shall be subject to the penalty additions prescribed in this section of the award.

2. HOURS OF WORK, PENALTY PAYMENTS, OVERTIME & WEEKEND WORK

- (a) Working outside ordinary hours - Monday to Friday:
- (i) Between 3.45 pm and 11.45 pm, Monday to Friday inclusive - one and one-half times the ordinary rate.
 - (ii) Between 11.45 pm and 7.45 am, Monday to Friday inclusive - and between 11.45 pm Sunday and 7.45 am Monday - double the ordinary rate.
- (b) Saturday work - Between 11.45 pm Friday and 11.45 pm Saturday - double the ordinary rate.
- (c) Sunday work - Between 11.45 pm Saturday and 11.45 pm Sunday - two and one-half times the ordinary rate.

- (d) Holiday work - All work done on New Year's Day, Australia Day, Hobart Regatta Day, Eight Hours' Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Christmas Day and Boxing Day:

Between 7.45am and 11.45pm - two and one half times the ordinary rate
 Between 11.45pm and 7.45am - treble the ordinary rate

- (e) (i) Employees working under this section of the award shall be paid for the mid-shift crib times at the rates prescribed for the shifts concerned. Such crib times shall be taken at the following times:

Day Shift	11.45am to 12.15pm
Afternoon Shift	7.45pm to 8.15pm
Night Shift	3.45am to 4.15am

- (ii) Employees under this section of the award who are required to work during the crib times prescribed by paragraph (i) hereof shall be paid the following rates for such crib times and thereafter until a crib time is allowed or the employee ceases work:

Monday to Friday -

Day Shift	double the ordinary rate
Afternoon Shift	double the ordinary rate
Night Shift	treble the ordinary rate

Saturdays -

All Shifts	treble the ordinary rate
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Sundays and holidays prescribed in subclause (e) hereof -

All Shifts	three and a half times the ordinary rate
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- (f) Before starting waterside work immediately after working a full day or shift of eight hours, employees shall be allowed a paid crib time of thirty minutes, unless the period of waterside work is to be one and a half hours or less.

If, with the approval of the employees concerned, such waterside work is continued for more than one and a half hours without a meal break, payment at the appropriate waterside workers' rates is to be made in lieu of crib.

An employee shall not work for more than five hours without a break for a meal.

- (g) The foregoing special provisions as to overtime and Sundays and holidays for waterside workers as herein defined are in lieu of the provisions relating to payment for overtime and for work performed on Sundays and holidays prescribed under the general conditions of this award.

Tim Abey
COMMISSIONER

4 August 2009