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**TASMANIAN INDUSTRIAL COMMISSION**

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

**Shop Distributive and Allied Employees Association,  
Tasmanian Branch**  
(T.6065 of 1996)

**RETAIL TRADES AWARD**

COMMISSIONER R J WATLING

HOBART, 1 March 1996

Award variation - increase tea money provision - application -granted - award varied operative ffpp 1 March 1996

**ORDER -**

**No. 1 of 1996  
(Consolidated)**

A NEW CLAUSE 38 IS SUBSTITUTED IN THIS AWARD AND THE AWARD IS CONSOLIDATED:

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## **1. TITLE**

This award shall be known as the "Retail Trades Award".

## **2. SCOPE**

This award is established in respect of the industry of selling goods by retail in shops other than those within the jurisdiction of Automotive Industries, Bakers, Chemists, and Meat Trades Awards but including the selling by retail of cooked or other prepared food which is not to be consumed on the sellers' premises, where those premises are principally used for the retailing of other goods.

## **3. ARRANGEMENT**

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#### **4. DATE OF OPERATION**

This award shall come into operation from the beginning of the first full pay period to commence on or after 1 March 1996.

#### **5. SUPERSESION AND SAVINGS**

This award incorporates and supersedes No. 2 of 1993 (Consolidated), No. 3 of 1993, No. 4 of 1993, No. 5 of 1993, and No. 1 of 1994, No. 2 of 1994, No. 3 of 1994, No. 1 of 1995 and No. 2 of 1995.

**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:-

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- (i) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
  - (ii) the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
  - (iii) the National Union of Workers, Tasmanian Branch, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
  - (iv) the Shop, Distributive and Allied Employees Association, Tasmanian Branch, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope; and
  - (v) the Transport Workers' Union of Australia, Tasmanian Branch, and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope.
- (d) the following organisations of employers in respect of whom award interest has been determined:
- (i) the Retail Traders Association of Tasmania and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 -Scope;
  - (ii) the Tasmanian Chamber of Retailers and officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope;
  - (iii) the Tasmanian Farmers and Graziers Employers Association and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 - Scope; and
  - (iv) the Tasmanian Newsagents Association Ltd and the officers of that organisation and their members who are engaged in the industry specified in Clause 2 -Scope;and
  - (v) the Tasmanian Confederation of Industries.

## **7. DEFINITIONS**

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

"**Industrial Commission**" means Tasmanian Industrial Commission.

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**"Launceston"** for the purpose of this award shall mean the area within 11 kilometres from the Chief Post Office at Launceston.

**"Nightfill"** means the replenishing of fixtures and/or shelves in a shop in the ordinary hours expressed in Clause 19 - Hours of Work subclauses 1. (a), (b), (c), (d), (e), (f) and (g).

A **"part-time employee"** is one engaged to regularly work for less hours per day or week than those prescribed for full-time employees.

### **RETAIL EMPLOYEE GRADE 1**

**Relativity 85%**

- This is the adult entry point for employees engaged in a sales, stores or clerical function with less than 6 months relevant experience in the retail industry, either as a junior or an adult.
- Such employees shall be advanced to a higher graded position after 6 months service. This shall mean 830 hours actual service.
- This grade also applies to an employee engaged predominantly on cleaning duties. Provided there shall be no automatic advancement to a higher graded position after 6 months service.

### **RETAIL EMPLOYEE GRADE 2**

**Relativity 92.1%**

General Description:

This is the main operating classification within the industry. Employees at this level would work under supervision, have sound interpersonal skills and exercise limited discretion.

Tasks:

Indicative of the tasks which might be required at this level are the following:

- Sales and customer assistance, cash register operation, wrapping and packaging
- Stock display
- Reordering of stock not requiring the exercise of discretion as to price, quality or type
- Driving of light vehicles incidental to sales or store duties
- Licensed operation of appropriate materials handling equipment
- General stores duties including operation of VDU

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- Basic clerical functions including operation of telephone/intercom systems, facsimile machines, mail functions, preparation and allotting of documents, processing of credit charges, filing of documents and records using an established paper based filing system
- Basic keyboard and VDU functions which are incidental to an employee's primary task.

Employment Categories:

The following employment categories would normally be found at this level.

- Sales Assistant
- Clerical Assistant
- Storeperson

### **RETAIL EMPLOYEE GRADE 3**

**Relativity 96%**

General Description:

Employees at this level are required to operate at a higher level than that expected of a Retail Employee Grade 2. In the main, employees will have designated supervisory, security or operational responsibilities and will be required to exercise discretion. Employees are responsible and accountable for their own work.

Tasks:

Indicative of the tasks which might be required at this level are the following:

- Supervisory assistance to a designated section manager or team leader
- Opening and closing of premises and associated security
- Security of cash
- Fitting of surgical corsets
- Advanced Floristry tasks
- General clerical functions including intermediate keyboard skills and word processing

Employment Categories:

The following employment categories would normally be found at this level.

Designated second-in-charge of a section (i.e. senior sales assistant)

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- Designated second-in-charge to a service supervisor
- Person employed alone, with responsibilities for the security and general running of a shop
- Storeperson with supervisory role
- Floristry tradesperson
- General clerical officer, typist
- Corsetiere

#### **RETAIL EMPLOYEE GRADE 4**

**Relativity 100%**

General Description:

Employees at this level exercise skill and responsibilities equivalent to that of tradesperson. In most cases employees at this level will be in supervisory positions and be required to exercise both discretion and initiative. Employees are required to implement policy matters within their functional areas.

Tasks:

Indicative of the tasks which might be required at this level are the following:

- Management of a defined section/department
- Supervision of up to 2 sales staff (including self)
- Stock control
- Buying/ordering requiring the exercise of discretion as to price quantity, quality etc.
- Supermarket front end supervisor of up to 15 employees (at any one time)
- Supervision of night fill operation
- Machine, keyboard and computer skills at an advanced level
- Initiation of straight forward correspondence
- Guidance of and allocation of work to lower level clerical staff

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Employment Categories:

The following employment categories would normally be found at this level.

- Section/Department manager with 2 employees (including self)
- Service Supervisor of up to 15 employees
- Night fill supervisor
- Tradesperson (other than floristry)
- Senior clerical officer

**RETAIL EMPLOYEE GRADE 5**

**Relativity 105%**

General Description:

Employees at this level are required to exercise supervisory, administrative and policy responsibilities at a higher level than Grade 4.

Tasks:

Indicative of the tasks which might be required at this level are the following:

- Management of a defined section/department with 3 or 4 employees (including self)
- Supermarket front end supervision of in excess of 15 employees (at any one time)
- Supervision of up to 4 clerical staff (including self)
- Payroll Management

Employment Categories:

The following employment categories would normally be found at this level.

- Section/Department manager with up to 4 employees (including self)
- Service Supervisor (more than 15 employees)
- Clerical officer in charge of up to 4 clerical staff (including self)



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## **RETAIL EMPLOYEE GRADE 6**

**Relativity 110%**

General Description:

Employees at this level will exercise an advanced level of supervisory and administrative responsibilities requiring a significant degree of discretion and initiative. They will be able to respond to and act upon complex and sensitive issues in the areas of customer services, planning, staff control, merchandising etc.

Tasks:

Indicative of the tasks which might be required at this level are the following:

- Management of a defined section/department with 5 or more employees (including self)
- Supervision of 5 or more clerical staff (including self)
- Credit control

Employment Categories:

The following employment categories would normally be found at this level:

- Section/department manager with 5 or more employees (including self)
- Administration officer in charge of 5 or more employees (including self)

## **RETAIL EMPLOYEE GRADE 7**

This applies to senior level administrative officers. The definitions and wage rates applicable to Administrative Officer Grades 6 and 7 of the Clerical and Administrative Employees (Private Sector) Award shall be applied.

**"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.

**"Trainees"** shall be employees bound by a Training Agreement.

**"Traineeship"** means –

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- (a) a system under the Australian Traineeship System (ATS) comprising structured on-the-job training with an employer and off-the-job training with a training institution/organisation approved by the Training Authority of Tasmania; or
- (b) a system of training under the Career Start Traineeship (CST) Scheme comprising structured training with an employer and it will include training in a Technical and Further Education College or other training provider approved by the Training Authority of Tasmania. Structured training for the purpose of a Career Start Traineeship shall mean formal instruction and closely supervised practice directly related to instruction 46 that is undertaken away from the job, as part of a training agreement.

**"Training Agreement"** shall mean an agreement registered under the provisions of the Industrial and Commercial Training Act 1985.

**"Window Dresser" and/or "Show Card-Writer"** means an employee the greater part of whose time is engaged in the supervision of and/or preparation of displays and/or dressing of windows.

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## **8. WAGE RATES**

### (a) Adults

Adult employees of a grade hereunder mentioned shall be paid the amount assigned opposite that grade.

Retail Employee	Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Grade 1	85	354.60	16.00	370.60
Grade 2	92.1	384.10	16.00	400.10
Grade 3	96	400.50	16.00	416.50
Grade 4	100	417.20	16.00	433.20
Grade 5	105	438.10	16.00	454.10
Grade 6	110	458.90	16.00	474.90
Grade 7	- See rates applicable as per Clerical and Administrative Employees. (Private Sector) Award			

### (b) Juniors

The minimum rates that may be paid to junior employees shall be the undermentioned percentages of the rate prescribed for a Retail Employee Grade 2.

	%	Weekly Wage Rate \$
Under 17 years of age	50	200.10
17 to 18 years of age	54.5	218.10
18 to 19 years of age	67.5	270.10
19 to 20 years of age	79.5	318.10
20 to 21 years of age	83	332.10

### (c) Transport Workers

Wage rates for employees engaged in transport classifications shall be as prescribed in Clause 8 - Wage Rates - of the Transport Workers General Award.

### (d) Nightfill Employees

All employees employed to work "Nightfill" (as defined) shall receive a "Nightfill loading". This loading shall be 25% and applied to all hours worked.

### (e) Floristry Apprentice

The minimum ordinary rate of payment for floristry apprentices shall be the undermentioned percentage of the rate for a Retail Employee Grade 3B.

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	%	Weekly Wage Rate \$
First Year	42	174.90
Second Year	55	229.10
Third Year	75	312.40
Fourth Year	88	366.50

(f) Trainees (ATS)

The weekly wages payable to Trainees (ATS) shall be determined by multiplying the appropriate junior rate as specified in subclause (b) hereof by 39 (which represents the actual number of weeks spent on the job) and dividing that sum by 52.

The wage rate determined by this calculation shall in no case be less than the minimum rate prescribed by the Australian Traineeship System Guidelines.

This figure is adjusted in accordance with State Wage Case decisions.

(g) Trainees (CST) Sales Assistants or Clerks

(i) The weekly wage payable to a Trainee (CST) - Sales Assistant or Clerk, shall be calculated by:

- (1) determining the hourly rate applicable to the relevant age as prescribed in the Retail Trades Award or a legally registered Industrial Agreement.
- (2) multiplying that hourly rate by the number of weekly ordinary hours, less the average weekly time specified in the training agreement to be spent in structured off-the-job training.

(ii) The hourly rate of pay for the purpose of calculation of overtime or shift penalties is the hourly rate applicable to the relevant age as prescribed in the award.

**PROVIDED** that trainee rates shall be calculated in multiples of ten cents with any result of five cents or more being taken to the next highest ten cent multiple.

(iii) The terms of this subclause applying to Career Start Traineeships operate in conjunction with a Commonwealth Government Scheme, under which, if weekly wages calculated using the method outlined above fall below \$125.00 for those under 18 years old and \$150.00 for those 18 years and over or any revised amount, the Commonwealth will provide a supplementary allowance to bring the total income of Trainees undertaking Career Start Traineeships up to those levels.

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In the event that the Commonwealth Government reduces these minimum income maintenance levels, the terms of the award will be revised.

(h) Additional Rates

Window-dressers or show card writers (as defined) shall receive 5% in addition to the total rate of pay applicable to their age or grade.

(i) 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 paid a tool allowance of not less than \$8.50 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.

(j) Translation

Employees who are employed as at 1 July, 1992 shall translate to the new structure in accordance with the procedures set out in schedule 1 to this award.

(k) Advice of Grading and Settlement of Disputes

(i) All current and future employees shall be notified in writing by the employer of their grading within one month of this award coming into operation or the date of engagement as the case may be.

(ii) In the event of a dispute regarding grading, the matter shall be discussed by the employer involved or his representative and the relevant union in an attempt to resolve the matter, and if then still in dispute, shall be referred to the President of the Tasmanian Industrial Commission for determination.

(iii) In respect of clerical and administrative employees Grade 4 and above, guidance may, where appropriate, be sought from the definitions at the equivalent relativity contained in the Clerical and Administrative Employees (Private Sector) Award.

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## **9. ANNUALIZED SALARY AGREEMENTS**

Overtime rates and allowances [Clauses 17 - Holidays with Pay, 18 - Holiday Work, 19 - Hours of Work, 20 - Loaded Hourly Rate, 23 - Overtime, 36 - Sunday Work, and 38 - Tea Money] may not apply to employees classified in Grades 5, 6 and 7.

**PROVIDED** that a written agreement is reached between the employer and employee for a suitable employment package to take account of work which is likely to be performed outside the ordinary hours (as defined).

Annualised Salary Agreements shall not apply to any employee classified as Grade 1, Grade 2, Grade 3 or Grade 4.

**PROVIDED** that

- (a) The employment package shall be of such nature as to generate a more advantageous remuneration package than would otherwise be available under award conditions in any agreed time period not exceeding four (4) weeks.
- (b) Either party may terminate the agreement on the giving of four (4) weeks notice.
- (c) One (1) week prior to entering into an agreement of this nature, the employee shall be provided with a copy of this clause.
- (d) All other provisions of the award shall apply.
- (e) During the month of July each year, an employer shall notify the office of the relevant union of the number of agreements made pursuant to this clause during the previous twelve (12) months and the number currently in existence.
- (f) These agreements shall be kept as part of the record required to be kept by employers under Part VII, Section 75 of the Industrial Relations Act 1984.

## **10. ANNUAL LEAVE**

- (a) Period of Leave

A period of one hundred and fifty two hours paid annual leave shall be allowed annually after 12 months' continuous service on weekly hiring.

- (b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in any combination, provided one period shall be not less than seven consecutive days, i.e. five working days.

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(c) Leave to be Exclusive of Public Holidays

If any of the holidays prescribed by Clause 17 - Holidays with Pay falls within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that leave one day for each such holiday so occurring.

**PROVIDED** that this clause shall not apply where an employee receives payment for the Public Holiday as if they had worked on that day under a projected roster in accordance with subclause (f) (i) of this clause.

(d) Payment in Lieu Prohibited

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

(e) Time of Taking Leave

Annual Leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued, and after not less than 2 weeks' notice to the employee.

(f) Payment for Period of Leave

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

(ii) In addition thereto all employees (including part-time employees engaged to work 20 or more hours per week) shall receive a loading of 17.5% of the ordinary time earnings (excluding penalty additions) as prescribed in paragraph (i) hereof.

(iii) In cases where a projected roster includes Saturday or late night penalty rates, the employee shall be paid the penalty rate component, or the 17.5% loading calculated on ordinary time earnings, whichever is the higher.

(iv) The loading herein prescribed shall not apply to proportionate leave on termination of service.

(v) **PROVIDED** that where a Nightfill Assistant would have received a night-fill loading as prescribed in subclause (d) of Clause 8 - Wage Rates, had he not been on leave during the relevant period and such loading would have entitled him to a greater amount than the loading of 17.5%, then the night fill loading shall apply in lieu of the 17.5% leave loading.

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(g) Leave Allowed before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the 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 complete month of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable to the employee upon the termination of the employment, one-twelfth of the amount of wages paid on account of annual leave, which amount shall not include any sums paid for any of the holidays prescribed by Clause 17 - Holidays with Pay.

(h) Proportionate Leave on Termination of Service

If after one completed month of service in any 12 monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid as follows:

12.67 hours for each completed month of continuous service. This service is in respect of which leave has not been granted.

## **11. CASUAL EMPLOYEES**

(a) Transport Workers

A casual employee (as defined) for working ordinary time shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave, and public holidays.

A minimum payment as for 4 hours shall be paid.

A casual employee shall be notified at the end of the day if his services are not required next working day, failing such notice a full day's wages shall be paid for the next working day.



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(b) Nightfill Employees

- (i) A Casual Nightfill employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly rate prescribed in Clause 8 - Wage Rates, for the work which he or she performs.
- (ii) In addition to the rate prescribed in paragraph (i) of this subclause, a Casual Nightfill Employee shall receive a loading of 20% of the ordinary hourly rate in respect of each hour for which he or she is paid provided that the 20% loading does not apply to the Nightfill Loading.
- (iii) Penalty rates prescribed elsewhere in this award are applicable to Casual Nightfill Employees.

The 20% loading prescribed in paragraph (ii) of this subclause shall be paid for all hours worked including times when penalty rates are applicable provided that all penalty additions shall be calculated on the wage rate excluding the 20% casual loading and the 25% nightfill loading, viz.

- (1) Time and one half equates to 1.95 of the ordinary time rate without the 20% or 25% loading
  - (2) Double time equates to 2.45 of the ordinary time rate without the 20% or 25% loading
  - (3) Double time and one half equates to 2.95 of the ordinary time rate without the 20% or 25% loading
- (iv) No Casual Employees shall be paid for less than four hours for work performed on any given night.

(c) All Others

- (i) A casual employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave, and public holidays.
- (ii) Subject to any different prescription contained elsewhere in this award, no casual employee shall be employed for less than four hours for work performed on any given day within the span of ordinary hours.

**PROVIDED** that where a period of engagement commences during the spread of ordinary hours and continues beyond that spread, the total number of hours worked in that engagement shall be counted for determining the minimum period of engagement herein prescribed.

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(iii) Where the trading period extends beyond 6.00 p.m. and the duration of the trading period is less than 4 hours, casual employees shall receive a minimum payment as for the duration of such trading period.

(d) Penalty Provisions

Penalty rates prescribed in Clauses 18 - Holiday Work, 23 - Overtime, and 36 - Sunday Work hereof are applicable to casual employees. The 20 per cent loading prescribed elsewhere in this clause shall be paid for all hours worked including times when penalty rates are applicable. **PROVIDED** that all penalty additions shall be calculated on the ordinary time rate excluding this loading, viz:-

- (i) Time and one half equates to 1.7 of the ordinary time rate without the 20% loading
- (ii) Double time equates to 2.2 of the ordinary time rate without the 20% loading
- (iii) Double time and one half equates to 2.7 of the ordinary time rate without the 20% loading

(f) Consecutive Hours

A casual employee shall have only one engagement consisting of consecutive hours per day with any one employer. **PROVIDED** that in establishments employing 5 or less employees broken shifts may be worked by mutual agreement between the employee and the employer.

(f) Saturday Morning

Subject to Clause 31 - Savings, employees working on Saturday morning shall receive a minimum payment as for 2 hours worked.

## **12. CLOTHING**

Where an employer requires an employee to wear outer clothing or protective clothing of a distinctive colour or style such clothing shall be supplied by the employer without cost to the employee. The cost of repair and replacement of such clothing shall likewise be the responsibility of the employer.

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### **13. COMPASSIONATE LEAVE**

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, 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 3 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, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

### **14. CONTRACT OF EMPLOYMENT**

- (a) With the exception of employees engaged as specified in Clause 11 - Casual Employees hereof, all employment shall be by the week and the employment of an employee will not be terminated except for misconduct which would justify instant dismissal, without at least one week's notice being given by the employer to the employee, and the employee shall likewise give to the employer one week's notice of his intention to terminate his employment. If one week's notice be not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be, and in the case of misconduct wages shall be paid up to the time of dismissal only.

Any dispute on what constitutes misconduct shall be determined by the Industrial Commission whose decision shall be final.

- (b) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

**PROVIDED** that such duties are not designed to promote deskilling.

- (c) An employee shall be entitled to receive on request a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service and shall become absolute property of the employee. Any prospective or future employer shall return the reference to the employee within 7 days of having received it.

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## **15. ENTERPRISE AGREEMENTS**

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

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## **16. ESTIMATING SERVICE**

In estimating the number of years service of an employee mentioned in this award, the total time in the service of every employer engaged in the trade or trades covered by this award shall be taken into account to ascertain the minimum wage rate which shall be paid.

**PROVIDED** that in respect to clerks, the total clerical experience in the service of every employer in the trades or groups of trades in respect of which Tasmanian Industrial Commission awards are established shall be taken into account.

## **17. HOLIDAYS WITH PAY**

- (a) All employees (other than casuals or part-time employees as mentioned in subclause (b), Clause 25 - Part-time Employees 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) 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 elsewhere in this award.
- (d) Casual Nightfill employees and part-time Nightfill employees (as mentioned in paragraph (ii), subclause (a), Clause 19 - Hours of Work for the hours worked within the 24-hour period of a public holiday mentioned in subclause (a) of this clause, shall be paid the penalty rates prescribed in Clause 18 - Holiday Work of this award (calculated in accordance with subclause (b) (iii) of Clause 11 - Casual Employees.

## **18. HOLIDAY WORK**

For all time of duty on any of the holidays mentioned in Clause 17 - Holidays with Pay of this Award payment shall be made at the rate of double time and one half with a minimum payment as for 4 hours worked.

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## **19. HOURS OF WORK**

### 1. NIGHTFILL ASSISTANTS

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

Eight hours per day on nineteen days with an accumulated Rostered Leisure Day on one day in each 20-day work cycle.

- (b) The ordinary hours of work shall be worked in 5 nights of 8 consecutive hours between the hours of 4.00 p.m. on the first day and 2.00 a.m. on the second day, Monday, Tuesday and Wednesday; 4.00 p.m. on Thursday and 7.00 a.m. on Friday; and 4.00 p.m. on Friday and 7.00 a.m. on Saturday. Where the late trading night alters from currently Thursday and Friday nights, a subsequent night will be worked in lieu thereof.
- (c) The Employee's starting time on Thursday night shall be between the hours of 4.00 p.m. and 9.00 p.m. and shall be determined by negotiations between the Company and the Employees. If the Employees so desire, the Union shall be involved in these negotiations.
- (d) The hours of work prescribed in this clause shall be continuous and shall include a Meal Break of 20 minutes. Such Meal Break shall be allowed after 4 hours and before the completion of 5 hours of work and shall be counted as time worked.
- (e) Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than 5 hours without a break of 20 minutes.
- (f) An employer with the agreement of the employee may, in an emergency situation, substitute the day an employee is to take off in accordance with subclause 1. (a) of this clause, for another day. **PROVIDED** that such agreement will not be unreasonably withheld.
- (g) Employees other than those engaged as provided for in Clauses 11 - Casual Employees and 25 - Part-time Employees hereof, shall, notwithstanding anything contained in Section 49 of the Industrial Relations Act 1984, be paid the weekly wage prescribed for a week of 38 hours for each week that he is ready, willing and available for work during the hours prescribed herein and, in addition thereto, such overtime or other penalty rates, if any, that may have occurred during the relevant period.

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2. ALL OTHERS

- (a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:-
  - (i) seven hours thirty-six minutes per day; or
  - (ii) eight hours per day on four days and six hours on one day in each week; or
  - (iii) eight hours per day on nine days and four hours on one day in each fortnight; or
  - (iv) eight hours per day on nineteen days with an accumulated rostered day off; or
  - (v) eight hours per day with an accumulation of rostered days off up to a maximum of five.

The method of implementation shall be determined on a store by store or where appropriate, department by department basis, whereby the primary consideration shall be the efficient maximisation of customer service in each establishment.

**PROVIDED** that establishments which employ fifteen or more full-time employees subject to this award shall adopt one or both of the options contained in (iv) and (v) herein. In circumstances whereby the implementation of such options can be shown to be contrary to the efficient maximisation of customer service, an establishment may seek discussions with the relevant unions as to alternative methods of implementation. If agreement cannot be reached the matter may be referred to the industrial Commission for resolution.

For the purposes of this clause 'establishment' shall mean an identifiable outlet or office.

- (b) (i) Subject to Clause 31 - Savings, and Clause 30 - Rosters, the ordinary hours shall be worked in, no more than, 5 days of 8 consecutive hours (excluding meal breaks) between the following hours:-

Monday, Tuesday and Wednesday	7.00A.M. to 6.30P.M.
Thursday and Friday	7.00A.M. to 9.30P.M.
Saturday,	7.00A.M. to 6.30P.M.
- (ii) Where a holiday contained in Clause 17 - Holidays With Pay, falls on either a Thursday or Friday, the ordinary hours for that day, as contained in subclause (b) (i) of this clause, may be transferred to the first preceding day containing a lesser number of ordinary hours than the day on which the holiday falls.

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- (iii) **PROVIDED** that the hours for employees engaged in the trade of news vendor shall (subject to the hours worked not exceeding on average 38 per week) be as follows:-

Launceston - as contained in subclause (b) (i) of this clause.

All other areas,

Monday, Tuesday and Wednesday,	6.00A.M. to 8.00P.M.
Thursday and Friday,	6.00A.M. to 9.30 P. M.
Saturday,	6.00A.M. to 6.30P.M.

- (c) The hours of work prescribed by this clause shall, excepting for a meal break of not less than 45 minutes nor more than 75 minutes, be continuous on each day. Such meal break shall be taken between the hours of 11.00 a.m. and 3.00 p.m.

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

- (d) Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than 5 hours without a break of not less than 45 minutes for a meal.
- (e) In circumstances whereby a system of 'Rostered Leisure Days' (RLD's) applies, 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.
- (f) Employees other than those engaged as provided for in Clauses 11 - Casual Employees and 25 - Part-time Employees hereof, shall, notwithstanding anything contained in Section 49 of the Industrial Relations Act 1984, be paid the weekly wage prescribed for a week of 38 hours for each week that he is ready, willing and available for work during the hours prescribed herein and, in addition thereto, such overtime or other penalty rates, if any, that may have occurred during the relevant period.

## **20. LOADED HOURLY RATE**

- (a) Employees shall be paid a loaded hourly rate for working Thursday between 6.00 p.m. and 9.30 p.m., Friday between 6.00 p.m. and 9.30 p.m. and Saturday between the hours 7.00 a.m. and 6.30 p.m.
- (b) **PROVIDED** that where ordinary hours on Monday, Tuesday or Wednesday are extended in accordance with Clause 19 - Hours of Work, subclause 2 MOO, the loaded hourly rate provided in this clause shall apply to that extended period.
- (c) The loaded hourly rate mentioned in subclause (a) of this clause shall be paid in accordance with the following:-



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Full-time and Part-time (not in receipt of 20% loading)

Thursday	6.00 p.m. to 9.30 p.m.	Column 1A
Friday	6.00 p.m. to 9.30 p.m.	Column 1A
Saturday	7.00 a.m. to 6.30 p.m.	Column 2A

Casuals and Part-time (in receipt of 20% loading)

Thursday	6.00 p.m. to 9.30 p.m.	Column 1B
Friday	6.00 p.m. to 9.30 p.m.	Column 1B
Saturday	7.00 a.m. to 6.30 p.m.	Column 2B

	<u>COLUMN 1</u>		<u>COLUMN 2</u>	
	A	B	A	B
Adults	\$	\$	\$	\$
Retail Employee Grade 1	12.78	14.48	17.04	18.74
Retail Employee Grade 2	13.86	15.71	18.48	20.33
Retail Employee Grade 3	14.51	16.44	19.34	21.27
Retail Employee Grade 4	15.44	17.49	20.58	22.64
Retail Employee Grade 5	15.75	17.85	21.00	23.10
Retail Employee Grade 6	16.38	18.56	21.84	24.02
Retail Employee Grade 7	18.45	20.91	24.60	27.06
Juniors				
Under 17 years	6.90	7.82	9.20	10.12
17 years	7.53	8.53	10.04	11.04
18 years	9.33	10.57	12.44	13.68
19 years	10.98	12.44	14.64	16.10
20 years	11.49	13.02	15.32	16.85
Floristry Apprentice				
1st year	6.14	6.95	8.18	9.00
2nd year	8.03	9.10	10.70	11.77
3rd year	10.95	12.41	14.60	16.06
4th year	12.84	14.55	17.12	18.83

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## **22. MIXED FUNCTIONS**

### (a) Other than Clerks

An employee engaged for more than half of one day on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for such day.

An employee engaged for less than half of one day on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for the time so worked, provided that the aggregate time so worked shall exceed 2 hours in any one week.

**PROVIDED** that this subclause shall only apply to persons employed as Retail Employees Grades 1 and 2 and junior employees.

**PROVIDED ALWAYS** that junior assistants shall receive the junior percentage of the higher rate.

### (b) Clerks Only

Where an employee is called upon to perform 2 or more grades of work in any one day he shall for the purposes of assessing the wages to be paid, be deemed to have worked the whole day at the grade of work for which the highest rate of wages is prescribed.

An employee transferred to perform a grade of work for which a lesser rate of wage is prescribed than that at which he is usually employed shall not be paid at such lesser rate unless he is given a weeks' notice of such change of wage rate.

## **23. OVERTIME**

### (a) For all time of duty in excess of ordinary hours or before the time fixed for commencing work or after the time fixed for ceasing work, payment shall be made at the following rate: -

- (i) Monday to Friday -  
time and one half for the first 3 hours and double time thereafter.
- (ii) Saturday -  
double time.

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- (b) An employee who is recalled to work overtime after a period of one hour from the time fixed for ceasing work, whether or not he has been notified before ceasing work, shall receive a minimum payment as for 3 hours worked.
- (c) A junior employee under the age of 18 years shall not be required to work overtime unless he or she so desires.
- (d) In computing overtime, each day's work shall stand alone.
- (e) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by thirty eight.
- (f) For the purpose of determining overtime entitlements of an employee, any employee who works ten minutes or more past the time fixed for ceasing work shall be paid overtime rate for all time worked after the time fixed for ceasing work.

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

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

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

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

## **24. 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.

### **PART A - MATERNITY LEAVE**

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'Paternity leave'** means leave of the type provided for in Part B - Paternity Leave.

**'Child'** means a child of the employee under the age of one year.

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**'Spouse'** includes a de facto or a former spouse.

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

At the time specified in subclause (e) hereof the employee must produce to her employer:

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) 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.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

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- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

Where 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 shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
  - (1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
  - (2) The period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
    - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
  - (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, which the employee is qualified for and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave,

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take any annual leave or long service leave or any part thereof to which she is entitled.

- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(k) Effect of Maternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

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- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

## **PART B - PATERNITY LEAVE**

### (a) Nature of Leave

Paternity leave is unpaid leave.

### (b) Definitions

For the purpose of this part:

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'Maternity leave'** means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

**'Child'** means a child of the employee or the employee's spouse under the age of one year.

**'Spouse'** includes a de facto or a former spouse.

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

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

### (c) Eligibility for Paternity Leave



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A male employee, upon production to his employer of the certificate required by subclause (d) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in subclause (e) the employee must produce to his employer:

- (i) 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 of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
  - (1) he will take that period of paternity leave to become the primary care-giver of the child;
  - (2) particulars of any period of maternity leave sought or taken by his spouse; and
  - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
  - (1) the birth occurring earlier than the expected date; or

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(2) the death of the mother or the child; or

(3) other compelling circumstances.

(iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

(i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

(1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(2) the period may be further lengthened by agreement between the employer and the employee.

(ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

(ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee

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but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave

- (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

**PART C - ADOPTION LEAVE**

(a) Nature of Leave

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Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

**'Employee'** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**'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 stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

**'Relative adoption'** occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

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

**'Spouse'** includes a de facto spouse.

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause, or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility

An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of the placement of the child;
- (ii) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
  - (1) any period of leave taken pursuant to paragraph (i) hereof; and

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- (2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
  - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
  - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, 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 the employee's spouse; and
  - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

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- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
  - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
    - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (2) the period may be further lengthened by agreement between the employer and employee.
  - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any

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compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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 shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

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(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

**PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

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

**'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.

**'Spouse'** includes a de facto spouse.

**'Former position'** means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this part whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(b) Entitlement



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With the agreement of the employer:

- (i) A male 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.
  - (ii) 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.
  - (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
  - (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
  - (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.
- (d) 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.
- (e) Pro Rata Entitlements
- Subject to the provisions of this part and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.
- (f) Transitional Arrangements - Annual Leave
- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the

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employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

- (ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (2) 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.

(g) Transitional Arrangements - Sick Leave

An employee working part-time under this part shall have sick 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.

(h) Part-time Work Agreement

- (i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:
  - (1) that the employee may work part-time;
  - (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
  - (3) upon the classification applying to the work to be performed; and
  - (4) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) 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.
- (iv) The terms of this agreement shall apply to the part-time employment.

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(i) Termination of Employment

- (i) 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.
- (ii) 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.

(j) 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 subclause (h).

(k) 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.

(l) 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:

- (i) limiting the number of employees who may work part-time;
- (ii) establishing quotas as to the ratio of part-time to full-time employees;
- (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (iv) requiring consultation with, consent of or monitoring by a union;

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

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(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee."

## **25. PART-TIME EMPLOYEES**

### 1. NIGHTFILL PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work 15 or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in Clauses 10 - Annual Leave, 17 - Holidays with Pay, and 32 - Sick Leave, provided that payment thereof shall be made at the rate normally paid to such employees for a similar period of time worked.

The wage rates payable, per hour, to part-time employees shall be calculated by using the divisor of one thirty-eighth of the relevant weekly rate.

- (b) Part-time employees engaged to work less than 15 hours per week shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work he or she performs. In addition thereto such employees shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.
- (c) Penalty rates prescribed in Clauses 18 - Holiday Work, 23 - Overtime, and 36 - Sunday Work herein are applicable to part-time employees.

**PROVIDED** that all penalty additions shall be calculated on the wage rate excluding the nightfill loading and any part-time loading as described in Clause 11 - Casual Employees, subclause (b), paragraph (iii).

- (d) A part-time employee shall have only one engagement consisting of consecutive hours per day.

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- (e) No part-time employee shall be paid for less than four consecutive hours for work performed on any given night.

## 2. ALL OTHERS

- (a) Part-time employees engaged to work 15 or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in Clauses 10 - Annual Leave, 17 - Holidays with Pay and 32 - Sick Leave, provided that payment thereof shall be made at the rate normally paid to such employees for a similar period of time worked.

The wage rates payable per hour, to part-time employees shall be calculated by using the divisor of one thirty-eighth of the relevant weekly rate.

- (b) Part-time employees engaged to work less than 15 hours per week shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work he or she performs. In addition thereto such employees shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.
- (c) Penalty provisions - penalty rates prescribed in Clauses 18 - Holiday Work, 23 - Overtime, and 36 - Sunday Work herein are applicable to part-time employees.

**PROVIDED** that in the case of part-time employees in receipt of a 20% loading, the penalty rates shall be calculated in the same manner as applies to casual employees described in Clause 11 - Casual Employees.

- (d) A part-time employee shall have only one engagement consisting of consecutive hours per day with any one employer. Provided that in establishments employing 5 or less employees broken shifts may be worked by mutual agreement between the employee and the employer.
- (e) No part-time employee shall be employed for less than four hours for work performed on any given day within the span of ordinary hours.

**PROVIDED** that where a period of engagement commences during the spread of ordinary hours and continues beyond that spread, the total number of hours worked in that engagement shall be counted for the purposes of determining the minimum period of engagement herein prescribed.

- (f) Where the trading period extends beyond 6.00 p.m. and the duration of the trading period is less than 4 hours, part-time employees shall receive a minimum payment as for the duration of the trading period.
- (g) Subject to Clause 31, Savings, employees working on Saturday morning shall receive a minimum payment as for 2 hours worked.

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## **26. PAYMENT OF WAGES**

Wages shall be paid weekly during the employer's time not later than Wednesday in each week, except in respect of the area comprised in the Municipalities of Gormanston, Queenstown, Strahan, Waratah and Zeehan, where payment of wages may be made fortnightly on Friday in each alternate week in working hours.

On the completion of the first full pay period and when any change is made in the weekly rate, the employee shall be notified in writing of the amount of wages to which he is entitled, the amount of deduction made therefrom, and the net amount being paid to him, provided also that such notification shall be given not less often than once in each year of service.

## **27. RATIO OF JUNIORS TO ADULT EMPLOYEES**

- (a) Sales staff and allied classifications other than Clerks and Nightfill Employees

The maximum number of juniors to be employed (during any pay period) shall not exceed the ratio of one junior to every one adult.

- (b) Clerks

The maximum number of juniors to be employed shall not exceed the ratio of two juniors to every one adult.

- (c) Nightfill Employees

The maximum number of juniors to be employed shall not exceed the ratio of two juniors to every one adult.

Proviso:

- (1) Not more than 10% of each retail outlet's night-fill staff shall be less than 18 years of age.
- (2) **PROVIDED** that each retail outlet shall be permitted at least one employee under 18 years of age.

## **28. REST PERIODS**

- (a) Nightfill Employees

- (i) Employees required to work for 4 hours or more on any day shall be granted one 5 minute rest period to be taken no earlier than one hour after the commencement of work and no later than 3 hours after the commencement of work.

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(ii) An employee required to work for 6 hours or more on any day shall be allowed an additional 5 minute rest period after not less than 6 hours and before the completion of 7 hours from the commencement of work.

(iii) All rest periods shall be counted as time worked.

(iv) **PROVIDED** that an employer may elect to amalgamate the breaks prescribed in (i) and (ii) above to be taken together thereby giving one ten minute break or may amalgamate both breaks with the meal break prescribed in Clause 19 - Hours of Work, subclause 2(d) - thereby giving one break of thirty minutes.

(b) All Others

Employees who work for 4 hours or more on any day shall be granted one 10 minute rest period. Provided that no rest period shall apply on Saturday morning.

If the work period includes a meal break, the rest period it to be granted in that portion of the work period which is the greater or where such work periods are of equal duration, the rest period of 10 minutes shall be given at a time to be mutually agreed upon.

**PROVIDED** that employees who work for 6 hours or more on any day shall be granted two 10 minute rest periods, one during the period of work before and one during the period of work after the meal break. All rest period shall be counted as time worked.

## **29. RIGHT OF ENTRY OF UNION OFFICIALS**

(a) For the purposes of interviewing employees on legitimate union business, an officer of an organisation of employees, accredited as hereinafter provided, may enter the employer's premises during regular meal or crib-time of employees on each day of the week on the following conditions:-

(i) That he produces his authority to the gatekeeper or such other person as may be appointed by the employer for that purpose;

(ii) That he interviews employees only at recognised places where they are taking their meal or crib;

(iii) That not more than one representative of each of not more than 3 unions be on the premises at any one time;

(iv) That no one representative visits the premises more than once in each week; and

(v) That if the employer alleges that a representative is unduly interfering with his work or is offensive in his methods or is creating dissatisfaction amongst his employees, or is committing a breach of the previous conditions, the

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employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Industrial Commission.

- (b) An officer shall be a duly accredited representative of an organisation if he be the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the seal of the organisation and bearing the signature of the holder. The certificate shall be in the following form or in a form not materially different therefrom:-

(Name of Organisation)

This is to certify that.....whose signature appears hereunder, is a duly accredited representative of the abovenamed organisation for the purpose of the Retail Trades Award.

(seal)

.....  
Secretary

.....  
Signature of Holder  
of Certificate

(This certificate is strictly not transferable)

**30. ROSTERS**

Rosters shall be established where an employer wishes to employ staff for more than 8 consecutive hours on any one day. The rosters shall be established on a store by store basis in accordance with this clause.

- (a) If a roster is required, the employer shall consult with the employees affected and the relevant unions prior to its establishment.
- (b) An employee who agrees to work under a roster established in accordance with this clause, shall be provided with a copy of that roster by the employer prior to the employee commencing work on that roster.
- (c) A roster may provide for an increase in the daily, weekly or monthly limit of hours prescribed elsewhere in this award provided that the following criteria are met:
  - (i) an employee shall not be required to work more than an average 38 hour week.
  - (ii) an employee shall not be required to work in excess of, two days of up to 12 hours with the remaining days of up to 9 hours, in any one week.
  - (iii) an employee shall not be required to work in excess of an average of five days per week in any roster cycle and in any event an employee shall not be required to work in excess of six days in any one week.



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- (iv) a roster shall not provide for a roster cycle in excess of four weeks.
- (v) an employee who is entitled to a rostered day off under Clause 19 - Hours of Work, shall not be deprived of receiving such rostered days off by the establishment of rosters under this clause.

### **31. SAVINGS**

- (a) As a consequence of the introduction of a thirty-eight hour week from the beginning of the first pay period commencing on or after 1 February 1987, the following saving provisions shall apply.

- (i) Clause 19 - Hours of Work

Employees who prior to 1 February 1987 had regularly worked in the period 7.00 a.m. to 8.00 a.m. Monday to Friday shall continue to receive payment at the rate of time and one half whilst working such hours.

- (ii) Clause 11 - Casual Employees and 25 - Part-Time Employees - Re: Saturday Work

The minimum period of engagement of two hours shall apply only to employees engaged after 1 February 1987. Employees engaged prior to that date shall receive minimum payments as for 3 hours worked, or the trading period, whichever is applicable.

- (iii) Clause 38 - Tea Money

Employees who prior to 1 November 1986 were regularly in receipt of a meal allowance shall continue to receive such allowance whilst continuing to work in a similar work pattern, notwithstanding that there may not be an entitlement under the amended clause.

For the purposes of this subclause, 'regularly' shall mean an employee who has received a meal allowance on at least 4 occasions in the 3 months prior to 1 November 1986.

- (iv) Settlement of Disputes

Any question arising under this clause which cannot be resolved at establishment level may be referred to the Industrial Commission for resolution.

- (b) As a consequence of the introduction of structural efficiency variations to the award the following savings provisions shall apply:-

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- (i) Notwithstanding anything otherwise contained in this award, weekly and part-time employees working prior to 1st January 1991, shall not be required to work their ordinary hours of work on Saturday or past 6.00 p.m. on Thursday or Friday night.
- (ii) The savings provisions in this subclause shall remain in effect until 31 December 1992.
- (c) (i) Part-time employees who were as at 1 July, 1992 working less than 20 hours per week and as a consequence were in receipt of a 20% loading, shall continue to be paid such loading unless it is mutually agreed otherwise. Such agreement to be in writing and maintained as part of the wage records.
- (ii) No employee shall, as a consequence of the new classification structure implemented on 1 July, 1992 suffer any loss of salary or other benefits which they may have enjoyed prior to that date.

### **32. SICK LEAVE**

- (a) An employee other than one engaged as a casual or part-time employee mentioned in subclause (b), Clause 25 - Part-time Employees of this award, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations -
  - (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
  - (ii) he shall, as soon as possible and where practicable within one hour of the commencement of the employees normal working day, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of absence;
  - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the 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 sick leave is claimed;
  - (iv) he shall not be entitled in any year to sick leave credit in excess of seventy six hours of ordinary working time. Provided that during the first three months of employment sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that

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employee in a subsequent year without diminution of the sick leave prescribed in respect of that year.

- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

### **33. SPECIAL PROVISIONS - NIGHTFILL**

- (a) Casual nightfill employees shall contact the employer no later than 2 p.m. to ascertain whether work is available on that day.

Where subsequent to 2 p.m. an employer through illness or other unforeseen circumstances determines that an employee previously not required is required, the onus is on the employer to contact the employee.

- (b) Casual nightfill employees who are notified that they are required to work and are subsequently not required shall be paid a minimum of 4 hours as if they had worked.
- (c) A nightfill employee who works overtime shall be given access to the time book to record overtime at the conclusion of the overtime so worked.

### **34. STEWARD**

An employee appointed steward in the shop, office or department in which he is employed shall, upon notification thereof to his employer, be recognised as the accredited representative of the Union to which he belongs, and he shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting employees whom he represents, provided that if the steward so requests it, he may be accompanied at such interview by another employee, and/or by his union official.

### **35. STRUCTURAL EFFICIENCY**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the retail industry and to enhance the career opportunities and job security of employees subject to the award.
- (b) Consistent with the objectives of subclause (a) of this clause, employers, employees and the union shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.

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### **36. SUNDAY WORK**

For all time of duty on a Sunday, payment shall be made at the rate of double time, with a minimum payment as for 4 hours worked.

### **37. SUPERANNUATION**

(a) Contribution

An employer shall make a contribution equivalent to 3% of ordinary time earnings into an approved Superannuation Fund in respect of all eligible employees (as defined) as from 1 June, 1989. Such earnings shall exclude overtime and allowances in the nature of a reimbursement (such as meal money).

In the case of full time adult employees permanently classified as drivers, the level of contribution shall be \$17.00 per week.

Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

(b) Casual and Part Time Employees

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

(c) Definitions

"Eligible Employee" shall mean an employee whether weekly, part time or casual, who has had at least 6 months continuous service with an employer subject to this award. Provided that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this Award.

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

(d) Fund

Contributions determined in accordance with subclause (a) of this clause shall, subject to subclause (e) of this clause, be made into either of the following nominated approved funds:-

(i) Retail Employees Superannuation Trust

(ii) TASPLAN

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(e) Exemption

The following employers shall be exempt from using the nominated funds referred to in subclause (d) of this clause and in lieu shall utilise the fund identified opposite their company name:-

<u>Business</u>	<u>Fund</u>
(i) Routleys Pty Ltd	Group Ten Superannuation Fund
(ii) Lloyd Arnold	National Flexi Super
(iii) Tasmanian Office Equipment	National Flexi Super Plus
(iv) Room To Move	The Eagle Retirement Fund

Notwithstanding the above, all superannuation exemptions approved by the Tasmanian Industrial Commission prior to 22 October 1993 shall remain in force.

- (f) Notwithstanding anything elsewhere contained in this clause, an employee who belongs to the religious fellowship known as Brethren and who holds a certificate issued under an Act may nominate an alternative complying fund into which the contributions shall be paid.

### **38. TEA MONEY**

- (a) Subject to Clause 31 - Savings, an employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid \$9.25 meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Industrial Commission.
- (c) The payment prescribed in subclause (a) of this clause shall be made on the day on which the overtime is worked, prior to the meal break being taken.

### **39. TRAINEESHIPS (ATS) - SALES ASSISTANTS AND CLERKS**

- (a) Trainees shall be engaged for a period of twelve months as full time employees, provided that trainees shall be subject to a satisfactory probation period of up to one month.
- (b) Where possible, a Traineeship position should be additional to normal staff numbers provided that no existing weekly employees shall be displaced by a trainee.
- (c) A trainee will receive on-the-job training by the employer (or employers) as specified in the Training Agreement and that "off- the-job" training will be provided by a training institution/organisation approved by the Training Authority of

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Tasmania. Provided that the total of on and "off-the-job" training will not exceed five days per week.

- (d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.
- (e) Time spent "off-the-job" on training shall be allowed without loss of continuity of employment.
- (f) Where the employment of a trainee by an employer is continued after completion of the "Traineeship period", such "Traineeship period" shall be counted as service for the purpose of the award.
- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular shop, department, or section, overtime is involved in the operation of that shop, department or section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) Under normal circumstances nightfill activities shall not be performed by trainees. However, when during a training period in a particular shop, department or section, nightfill activities are involved in the operation of that shop, department or section, nightfill duties may be performed by Sales Assistant trainees. Where nightfill duties are performed the normal penalty rates shall apply. No trainee under the age of 17 years can be required to work on nightfill.
- (i) Notwithstanding the provisions of Clause 27 - Ratio of Junior to Adult Employees of this award the Ratio Provisions shall not apply to or include trainees.
- (j) Preference in continuation in employment shall be given to trainees should vacancies occur at the successful completion of the traineeship.
- (k) The Unions shall be afforded reasonable access to trainees for the purposes of explaining the role and functions of the unions.
- (l) Trainees shall not perform higher duties unless in the course of their traineeship.
- (m) Trainees shall be exempt from action in respect to industrial disputes.

#### **40. TRAINEESHIPS (CST) - SALES ASSISTANTS OR CLERKS**

This clause applies only to persons employed under the Career Start Traineeship Scheme in the Retail Industry and registered as trainees with the Training Authority of Tasmania.

Duration and amount of training:

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- (a) A trainee undertaking a Career Start Traineeship shall be engaged as a full-time employee, for a traineeship of a minimum period of one year, provided that the trainee shall be subject to a satisfactory probationary period of one month.

The Career Start Traineeship shall be:-

- (i) for trainees with a year 10 or lesser general education achievement: up to two years duration;
  - (ii) for trainees who have completed year 11 studies: up to 18 months duration; or
  - (iii) for trainees who have completed year 12 studies: of one year's duration.
- (b) A trainee undertaking a Career Start Traineeship with a year 10 or lesser level of general education achievement shall spend the amount of time in structured off-the-job training specified in the training agreement. This shall be:-
- (i) during the first year on average, up to 50% of ordinary working hours each week;
  - (ii) where a traineeship extends beyond the first year, on average, up to 35% of ordinary working hours each week during this period.
- (c) A trainee undertaking a Career Start Traineeship who has completed year 11 studies shall spend the amount of time in structured off-the-job training specified in the training agreement. This shall be:-
- (i) during the first year, on average, up to 35% of ordinary working hours each week;
  - (ii) where the traineeship extends beyond the first year, on average, up to 25% of ordinary working hours each week during this period.
- (d) A trainee undertaking a Career Start Traineeship who has completed year 12 shall spend the amount of time in structured off-the-job training specified in the training agreement. This shall be, on average, up to 25% of ordinary working hours each week.
- (e) Notwithstanding the foregoing, the duration of the traineeship and the extent of structured off-the-job training it entails may be varied outside the limits, specified in (a), (b), (c) or (d) above with:
- (i) the consent of the Training Authority of Tasmania or its agent;
  - (ii) where the relevant union is represented in a workplace that will be covered by the variation, the agreement of the relevant union(s).

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- (f) Time spent "off-the-job" on training shall be allowed without loss of continuity of employment.
- (g) Where employment of a trainee by an employer is continued after completion of the "Traineeship period" such "Traineeship period" shall be counted as service for all purposes.
- (h) Preference in continuation in employment shall be given to trainees should vacancies occur at the conclusion of the training period.
- (i) That provisions of the relevant Workers' Compensation and Occupational Health & Safety Acts shall apply to trainees.
- (j) The rostering of hours of work by trainees shall be decided by mutual agreement between the employer and employees concerned provided that such rosters are in accordance with the Retail Trades Award.
- (k) Subject to the provisions of the Industrial Relations Act 1984 the union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the union.
- (l) Where possible, Traineeship positions should be additional to normal staff numbers provided that no existing employees shall be displaced by a trainee.
- (m) The employer shall ensure that the trainee is permitted to attend the prescribed off-the-job training course and is provided with on-the-job training approved by the Training Authority of Tasmania.
- (n) The employer agrees that the overall training programme will be monitored by officers of the Training Authority of Tasmania and Training Record Books may be utilised as part of this monitoring process.
- (o) Under normal circumstances nightfill activities shall not be performed by trainees. However, when during a training period in a particular shop, department or section, nightfill activities are involved in the operation of that shop, department or section, nightfill duties may be performed by Sales Assistant trainees. Where nightfill duties are performed the normal penalty rates shall apply. No trainee under the age of 17 years can be required to work on nightfill.
- (p) Notwithstanding the provisions of Clause 27 - Ratio of Juniors to Adult Employees of this award, the ratio provisions shall not apply to or include trainees.
- (q) Trainees shall not perform higher duties unless in the course of their traineeship.
- (r) Career Start Trainees shall be exempt from action in respect of industrial disputes. However, the employer shall observe the provisions determined by the Training Authority of Tasmania in respect of the use of Career Start Trainees in the time of industrial action.



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#### **41. TRANSPORT WORKERS - CONDITIONS OF EMPLOYMENT**

Employees classified as transport workers shall be subject to the following designated clauses in the Transport Workers General Award:

Annual Leave	Hours of Work
Contract of Employment	Overtime
Holidays	Payment of Wages

In all other respects, the conditions of this award shall apply.

R.J. Watling  
**COMMISSIONER**  
1 March 1996

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## **SCHEDULE 1.**

### **GRADING AND TRANSLATION**

#### **New Employees**

Employees engaged subsequent to 1 July, 1992 shall be appointed to a grade in accordance with the definitions.

#### **Existing Employees**

Employees who are in employment as at 1 July, 1992 shall translate to the new structure in accordance with the schedule set out hereunder.

There may be instances whereby after examination of the duties, responsibilities, etc. and the new definitions, an employee should be classified at a grade higher than that indicated in the schedule. In such cases translation to the appropriate higher grade should occur not later than 1 December, 1992.

### **TRANSLATION SCHEDULE**

#### **Previous Classification**

#### **Translate to**

#### **Section (a) Sales**

1. Assistant	
1st year adult experience	1
2nd year adult experience	1
3rd year adult experience	2
2. Senior Sales Assistant	3
3. Section Manager	
(i) 5 or more employees	6
(ii) 3 or 4 employees	5
(iii) 2 employees	4
4. Gunsmith	4
5. Cleaner	1
6. Corsetiere	3
7. Van Salesman	2

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<b>Previous Classification</b>	<b>Translate to</b>
8. Florist	3
<b>Section (b) Stores</b>	
1. Storeman Grade 1	2
2. Storeman Grade 2	2
3. Storeman i/c of other Storeman	3
Section (c) Clerk	
1. Grade 1	2 & 3
2. Grade 2	3
3. Grade 3	3
4. Grade 4	4
5. Grade 5	7
6. In charge of -	
(a) 2 employees	4
(b) 3 or 4 employees	5
(c) 5 or more employees	6