

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T2246 of 1989

**IN THE MATTER OF AN APPLICATION BY
THE FEDERATED CLERKS UNION OF
AUSTRALIA, TASMANIAN BRANCH TO VARY
THE VEGETABLE PRESERVERS AWARD**

**RE: 38-HOUR WEEK; 4% SECOND TIER
INCREASE AND 3% OCCUPATIONAL
SUPERANNUATION**

ORDER BY CONSENT -

**No. 2 of 1990
(Consolidated)**

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

1. TITLE

This award shall be known as the "Vegetable Preservers' Award".

2. SCOPE

This award is established in respect of:-

- (a) Fruit or Vegetable Preservers; or
- (b) Sauce, Soup (including soup concentrates), or Vinegar Maker; or
- (c) Producer of fruit juices or vegetable juices.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation as from the beginning of the first full pay period commencing on or after 17 July 1990.

PROVIDED that it is a term of this award (arising from the decision of the Tasmanian Industrial Commission State Wage Case of 30 October 1989) that the union(s) undertake(s), for the duration of the principles determined by that decision, not to pursue any extra claims, award or overaward, except where consistent with those principles.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 1 of 1990 (Consolidated).

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:-
 - (i) the Federated Clerks Union of Australia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) The Federated Engine Drivers' and Firemen's Association of Australasia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (iii) The Food Preservers Union of Australia (Tasmania Branch) and the officers of that organisation and their members employed 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 TFGA Industrial Association and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope and
 - (ii) 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.

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

'Boiler Attendant In Charge of Plant' means the boiler attendant who does the general repair work of the plant in addition to the work of attending the boiler, but not when he merely assists the fitter or engineer to do such work.

'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 eleven (11) paid public holidays per year.

8. WAGE RATES

DIVISION A - EMPLOYEES OTHER THAN CLERKS

1. WAGE RATES

- (a) The rates of pay of employees under this Division shall with the exception of subclause 2 - Minimum Wage, and subclause 3 - Boiler Attendant, of this Division, be in accordance with those prescribed in the award known as the Food Preservers Award, made by the Australian Industrial Relations Commission.
- (b) Any dispute arising in respect of subclause 1 (a) of this Division shall be referred to the Tasmanian Industrial Commission whose decision shall be final.

2. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 - Wage Rates, of this Division, no adult employee shall be paid less than the rate of \$241.10 per week.
- (b) Provided that payments for overtime, weekend penalties and holiday work prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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

3. BOILER ATTENDANT

Amount per Week
\$

- (a) Boiler Attendant 323.00
- (b) Boiler Attendant In Charge of Plant -

A boiler attendant 'in charge of plant' (as defined) shall be paid in addition to the rate prescribed in (a) above, an allowance of \$16.20 per week.

This allowance is payable for all purposes of the award.

DIVISION B - CLERKS

1. WAGE RATES

Employees of a classification hereunder mentioned shall (except as provided in subclause 1 (b) of this Division) be paid the amount prescribed opposite that classification.

- (a) Adults

First year of adult experience	290.90
Second year of adult experience	312.00
Third year of adult experience	339.70
Fourth year of adult experience	350.50
Fifth year of adult experience	358.30

- (b) Proviso - When determining the rate payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in which awards of the Tasmanian Industrial Commission are established, experience obtained after reaching the age of 19 years shall be counted as adult experience.

	Amount per Week \$
(c) In-Charge Rates -	
In charge of 2	374.50
In charge of 3 - 4	385.00
In charge of 5 or more	401.30
Chief Clerk	453.20

2. JUNIORS

The minimum rates of wages that may be paid to juniors shall be the undermentioned percentages of the 2nd year adult rate, adjusted to the nearest 10 cents.

	Percentage of 2nd Year Adult Rate	Amount per Week \$
Under 16	40	124.80
At 16	45	140.40
At 17	55	171.60
At 18	70	218.40
At 19	80	249.60
At 20	90	280.80

CONDITIONS OF EMPLOYEES IN DIVISION A - EMPLOYEES OTHER THAN CLERKS

9. ANNUAL LEAVE

(a) Period of Leave

A period of twenty eight (28) consecutive days leave shall be allowed annually to an employee after twelve (12) months continuous service (less the period of annual leave).

(b) Annual Leave Exclusive of Public Holidays

- (i) Such period of annual leave shall not include any holiday mentioned in Clause 21 of the Federal Food Preservers Award when such holiday is observed on a working day, but shall include all other non-working days.

(ii) If any holiday mentioned in Clause 21 of the Federal Food Preservers Award falls within an employee's period of annual leave, and is observed on the day which in the case of that employee would have been an ordinary working day, there shall be added to that period one working day for each such holiday observed as aforesaid.

(iii) Notwithstanding anything herein before contained, an employee shall not be entitled to payment for any holiday mentioned in Clause 21 of the Federal Food Preservers Award which falls within his period of annual leave and is observed on a day which in the case of such employee would otherwise have been an ordinary working day if, except for reasonable cause (proof whereof shall be upon him) he failed to resume at his ordinary starting time on the working day immediately following the period comprising his period of leave (extending by any such intervening holiday or holidays) and to remain at work thereafter for the number of days equivalent to the number of such holidays.

(c) Notice of Leave

At least seven (7) days notice shall be given to an employee as to when he is to commence his leave.

(d) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six (6) months from the date when the right to annual leave accrued and after not less than one (1) week's notice to the employee; provided that the giving of annual leave may with the consent of the Tasmanian Industrial Commission be postponed for a period to be specified in cases where the exigencies of the industry render it impracticable to give it in the said period of six (6) months.

(e) Leave to be Given and Taken

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

(f) Payment for Period of Leave

Each employee before going on leave shall be paid the amount of wage he would have received in respect of the ordinary time which he would have worked had he not been on leave during the relevant period.

In addition thereto, all employees, other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, Division A - Employees other than Clerks, subclause 2 - Minimum Wage, of this award.

Payment in cases of employees employed on piece-work or bonus work or any other system of payment by results, shall be at time rates.

(g) Leave Allowed Before Due Date

(i) An employer may grant 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 the expiration of the twelve (12) months in respect of which annual leave had been taken before it accrued.

(ii) Where leave has been granted to an employee pursuant to paragraph (i) above, before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve (12) months continuous service in respect of which the leave was granted, the employer may for each one complete month of the qualifying period of twelve (12) months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of the wages paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed in Clause 21 of the Federal Food Preservers Award.

(h) Proportionate Leave on Termination of Service

Proportionate payment shall be made to an employee in respect of each completed month of continuous service when such employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, on the following basis:

thirteen and one third (13 1/3) hours for each completed month of continuous service.

(i) Calculation of Continuous Service

(i) Service shall be deemed to be continuous notwithstanding -

- (a) any interruption or determination of the employment by the employer if such interruption or determination has been made with the intention of avoiding obligations hereunder in respect of annual leave;
- (b) any absence from work of not more than ninety-one (91) days in the twelve (12) months on account of sickness or accident (proof whereof shall be on the employee);
- (c) any absence on account of leave granted, imposed, or agreed to by the employer;
- (d) any absence due to reasonable cause (proof whereof shall be on the employee);

PROVIDED THAT in cases of personal sickness or accident or absence with reasonable cause, the employee to be entitled to the benefit of this subclause shall if practicable inform the employer in writing within twenty four (24) hours after the commencement of such absence of his inability to attend for duty and as far as practicable the nature of the illness, injury, or cause, and the estimated duration of the absence.

(ii) In calculating a period of twelve (12) months continuous service -

- (a) (i) any annual leave taken therein;
- (ii) any absence of the kind mentioned in (a) and (b) of paragraph (1) above, shall be counted as part of such period;
- (b) in respect of absences of the kind mentioned in (c) and (d) of paragraph (i) above, the employee shall serve such additional period as part of his qualification for annual leave as will equal the period of such absences;

- (c) where an employee is absent from work for any cause other than a cause stated in (a) or (c) of paragraph (i) of this subclause and who does not prove to the employer within fourteen (14) days of resuming work after such absence, or in the event of a dispute, the Tasmanian Industrial Commission, that the absence was due to sickness, accident or reasonable cause, he shall forfeit the right to the proportion of annual leave for the month in which such absence occurs.

(j) Calculation of Month

For the purpose of this clause, a month shall be reckoned as commencing with the beginning of the first day of employment or period of employment in question and as ending at the beginning of the day which in the latest month in question has the same date number as that which the commencing day had in its month and if there be no such day in such subsequent month, shall be reckoned as ending at the end of such subsequent month.

(k) Successor or Assignee

Where the employer is a successor or assignee or transmittee of a business, if an employee was in the employment of the employer's predecessor at the time when he became such successor or assignee or transmittee, the employee in respect of the period during which he was in the service of the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

(l) Annual Close Down

Where an employer closes down the plant, or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the plant or section or sections concerned, the following provisions shall apply:

- (i) He may, by giving the employees concerned not less than one (1) month's notice of his intention so to do, stand off for the duration of the close down all employees in the plant or section or sections concerned, and allow to those who are not then qualified for four (4) weeks annual leave, paid leave on the proportionate basis of thirteen and one third (13 1/3) hours for each completed month of continuous service.

- (ii) An employee who has then qualified for four (4) weeks annual leave and has also completed a further month or more of continuous service shall be allowed his leave and shall also be paid thirteen and one third (13 1/3) hours for each completed month of continuous service for service performed since the close of his last twelve-monthly qualifying period.
- (iii) The next twelve-monthly qualifying period for each employee affected by such close down shall commence from the day on which the plant, or section, or sections concerned is reopened for work.
- (iv) If in the first year of service with an employer an employee is allowed proportionate annual leave under paragraph (i) above, and subsequently within such year lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, he shall be entitled to the benefit of subclause (h) of this clause subject to adjustment for any proportionate leave which he may have been allowed as aforesaid.

(m) Disputes

Any dispute as to the rights of an employee to or with respect to annual leave, shall be dealt with by the Tasmanian Industrial Commission.

10. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step-mother, step-father, grandfather, grandmother, be entitled, upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three (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 purposes 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.

11. GENERAL CONDITIONS

- (a) Conditions of employment of employees under this Division shall, with the exception of those provisions hereinbefore prescribed, be in accordance with the provisions prescribed in the award known as the Food Preservers Award, made by the Australian Industrial Relations Commission.
- (b) Any dispute arising in respect of the provisions of subclause (a) above shall be referred to the Tasmanian Industrial Commission whose decision shall be final.

12. POSTING OF AWARD IN FACTORY - ACCESSIBILITY

This award with any variations made thereto appropriate to employment in the establishment, shall be exhibited, when available, by each employer at his factory in a place accessible to all employees.

To prevent loss, defacement or destruction, the award should be displayed in a locked glass fronted case so that employees can readily read all the matters listed therein.

13. 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 meals or crib;
 - (iii) that not more than one representative of each of not more than three (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 dis-satisfaction amongst his employees, or is committing a breach of the previous conditions, the employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Tasmanian 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 abovementioned organisation for the purpose of the Vegetable Preservers' Award.

Secretary

(Seal)

Signature of Holder of
Certificate

(This certificate is strictly not transferable)

(c) For the purposes of Section 77 of the Industrial Relations Act 1984, the following organisations of employees shall be recognised:

Food Preservers Union of Australia (Tasmania Branch)
Federated Clerks Union of Australia, Tasmanian Branch
Federated Engine Drivers' and Firemen's Association of
Australasia, Tasmanian Branch

14. SICK LEAVE

- (a) An employee, other than one engaged as a casual, 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, within forty-eight (48) hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury, and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two (2) weeks of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation, or within two (2) weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

CONDITIONS FOR EMPLOYEES IN DIVISION B - CLERKS

15. ANNUAL LEAVE

(a) Period of Leave

A period of one hundred and fifty-two (152) hours paid annual leave shall be allowed annually after twelve (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 (1) consecutive period, or if the employer and the employee agree, in one of the following methods:

- (i) in two (2) separate periods, the lesser of which shall be not less than seven (7) consecutive days, i.e. five (5) working days;
- (ii) in any combination, provided one (1) period shall be not less than seven (7) consecutive days, i.e. five (5) working days. No entitlement shall be permitted to accrue beyond twelve (12) months after the date of accrual.

(c) Leave to be Exclusive of Public Holidays

If any of the holidays prescribed by Clause 22 - Holidays with Pay, of this award 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.

(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 six (6) months from the date when the right to annual leave accrued, and after not less than two (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 the ordinary time 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 twenty (20) or more hours per week) shall receive a loading of 17 1/2% on payment made for annual leave as prescribed in paragraph (i) hereof. Such loading shall not apply to proportionate leave on termination of service.
- (iii) Part-time employees engaged to work less than twenty (20) hours per week for a continuous twelve (12) months period shall be paid a loading on each anniversary date of their engagement for employment.

Such loading shall be calculated in the following manner:

70% of the average weekly wage for the three (3) months prior to the anniversary date falling due. This average weekly wage is to exclude the 20% loading paid in lieu of annual leave, sick leave and public holidays.

(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 twelve (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 twelve (12) months continuous service in respect of which the leave was granted, the employer may, for each complete month of the qualifying period of the twelve (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 22 - Holidays with Pay, of this award.

(h) Proportionate Leave on Termination of Service

If after one completed month of service in any twelve (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:

13 1/3 hours for each completed month of continuous service. This service is in respect of which leave has not been granted.

16. CASUAL EMPLOYEES

(a) A casual employee, for working ordinary time, shall be paid per hour one thirty-eighth (1/38th) of the weekly rate prescribed for the work which he performs. In addition thereto a casual employee shall receive twenty per cent (20%) of the ordinary rate in respect of each hour for which he is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

(b) Penalty Provisions

Penalty rates prescribed in Clauses 27 - Overtime, 34 - Saturday Work, 37 - Sunday Work and 23 - Holiday Work, of this award are applicable to casual employees.

17. 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.

18. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step-mother, step-father, grandfather, grandmother, be entitled upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three (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.

19. CONTRACT OF EMPLOYMENT

- (a) With the exception of employees engaged as specified in Clause 16 - Casual Employees of this award, 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 Tasmanian Industrial Commission whose decision shall be final.

- (b) 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 seven (7) days of having received it.

20. ESTIMATING SERVICE

In estimating the number of years service of clerks, the total clerical experience in the service of every employer in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established shall be taken into account.

21. EXISTING WAGE RATES

No employee shall have his rate of wages reduced as a result of this award.

22. HOLIDAYS WITH PAY

- (a) All employees (other than casual or part-time employees as mentioned in Clause 28 - Part-time Employees, subclause (b) 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), the first Monday in November (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for the holidays mentioned in subclause (a) above 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) above shall be at the rates prescribed elsewhere in this award.

23. HOLIDAY WORK

For all time of duty on any of the holidays mentioned in Clause 22 - Holidays with Pay, of this Division, payment shall be made at the rate of double time and one half with a minimum payment as for four (4) hours worked.

24. HOURS

- (a) The ordinary hours of work shall be an average of thirty-eight (38) per week to be worked on one of the following bases:
 - (i) seven (7) hours thirty-six (36) minutes per day; or
 - (ii) eight (8) hours per day on four (4) days and six (6) hours on one (1) day in each week; or
 - (iii) eight (8) hours per day on nine (9) days and four (4) hours on one (1) day in each fortnight; or
 - (iv) eight (8) hours per day on nineteen (19) days with an accumulated rostered day off; or
 - (v) eight (8) hours per day with an accumulation of rostered days off up to a maximum of five (5).

The method of implementation shall be determined at an enterprise - or where appropriate, department by department - basis whereby the primary consideration shall be the efficient maximisation of customer service in each establishment.

In the event of a dispute in relation to the method of implementation, the procedure set out in Clause 31 - Resolution of Disputes Relating to Implementation of Thirty-Eight Hour Week, shall be followed.

Provided that establishments which employ fifteen (15) or more full-time employees subject to this award shall adopt one or both of the options contained in subclauses (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 union as to alternative methods of implementation. If agreement cannot be reached the matter may be referred to the Tasmanian Industrial Commission for resolution.

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

- (b) The ordinary hours shall be worked on five (5) consecutive days between the hours of 7.00 a.m. and 6.00 p.m., Monday to Friday inclusive (excluding meal breaks) up to a maximum of eight (8) hours in any one (1) day.
- (c) The hours of work prescribed by this clause shall, excepting for a meal break of not less than forty-five (45) minutes or more than seventy-five (75) minutes, be continuous on each day. Such meal break shall be taken between the hours of 11.30 a.m. and 2.30 p.m.
- (d) Except where overtime is worked for a period not exceeding one (1) hour after normal finishing time, no employee shall work for more than five (5) hours without a break of not less than forty-five (45) minutes for a meal.
- (e) Employees other than those engaged as provided for in Clause 28 - Part-time Employees and Clause 16 - Casual Employees, of this award, shall be paid the weekly wage prescribed for a week of thirty-eight (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.

25. MATERNITY LEAVE

- (a) Eligibility for Maternity Leave

An employee who becomes pregnant, shall upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than twelve (12) months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(i) an employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(ii) maternity leave shall mean unpaid maternity leave.

(b) Period of Leave and Commencement of Leave

(i) Subject to subclauses (c) and (f) of this clause, the period of maternity leave shall be for an unbroken period of from six (6) to fifty-two (52) weeks and shall include a period of six (6) weeks compulsory leave to be taken immediately following confinement.

(ii) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(iii) An employee shall give not less than four (4) weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.

(iv) An employer by not less than fourteen (14) days notice in writing to the employee may require her to commence maternity leave at any time within six (6) weeks immediately prior to her presumed date of confinement.

(v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (iii) above, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g), (h), (i) and (j) of this clause.

(d) Variation of Period of Maternity Leave

- (i) Provided the addition does not extend the maternity leave beyond fifty-two (52) weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be shortened.

(e) Cancellation of Maternity Leave

- (i) Maternity leave applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four (4) weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(f) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after twenty-eight (28) weeks other than by the birth of a living child then -
 - (a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of, or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed fifty-two (52) weeks.
- (iii) For the purposes of subclauses (g), (h) and (i) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) of this clause, to the position she held immediately before such transfer.

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

(g) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave, including leave taken pursuant to subclauses (c) and (f) of this clause, does not exceed fifty-two (52) weeks:

- (i) an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled;
- (ii) paid sick leave or other paid authorised award absences (excluding annual leave), shall not be available to an employee during her absence on maternity leave.

(h) Effect of Maternity Leave on Employment.

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

(i) Termination of Employment

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

(j) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon expiration of the notice required by paragraph (i) above, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) of this clause to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(k) Replacement Employees

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

- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve (12) months qualifying period.

26. MIXED FUNCTIONS

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 two (2) hours in any one week.

27. 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:

time and one half for the first three (3) hours and double time thereafter.

- (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 three (3) hours worked.
- (c) A junior employee under the age of 18 years shall not be required to work overtime unless he so desires.
- (d) In computing overtime, each day's work shall stand alone.

28. PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work twenty (20) or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in Clauses 22 - Holidays with Pay, 15 - Annual Leave and 35 - Sick Leave of this award, provided that payment therefor shall be made at the rate normally paid to such employees for a similar period of time worked.

The wage rates payable per hour shall be one thirty-eighth (1/38th) of the relevant rate above set out.

- (b) Part-time employees engaged to work less than twenty (20) hours per week shall be paid per hour one thirty-eighth (1/38th) of the weekly rates prescribed for the work he performs. In addition thereto, such employees shall receive 20% of the ordinary hourly rate in respect of each hour for which he 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 27 - Overtime, 34 - Saturday Work, 37 - Sunday Work and 23 - Holiday Work, of this award are applicable to part-time employees.

29. PAYMENT OF WAGES

Wages shall be paid weekly during the employer's time, not later than Wednesday in each week.

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.

30. RATIO OF JUNIORS TO ADULT EMPLOYEES

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

31. RESOLUTION OF DISPUTES RELATING TO IMPLEMENTATION OF THIRTY-EIGHT HOUR WEEK.

In the event of any dispute relating to the implementation of the thirty-eight (38) hour week, the following procedures shall be observed:

- (a) The matter shall, in the first instance, be discussed at establishment level.
- (b) In the event that the matter remains unresolved, the officials of the relevant union may be involved. The employer may seek to involve his employer organisation.
- (c) Should the matter remain unresolved it shall be referred to the Tasmanian Industrial Commission for resolution.

- (d) The above procedure is to be followed without resort to industrial disputation and the parties will, in examining any issue, have regard to the spirit as well as the letter of the agreement.

32. REST PERIOD

Employees shall be allowed a rest period between the start of work and the midday meal break and rest period between the resumption of work after the midday meal break and the cessation of work for the day. One rest period shall be of 10 minutes duration and one of 5 minutes duration, to be taken at such times as may be mutually arranged between the employer and the employees.

33. RIGHT OF ENTRY OF UNION OFFICIALS

- (a) For the purpose 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 the union 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 employer may refuse the right of entry but the representative shall have the right to bring such refusal before the Tasmanian 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 Vegetable Preservers Award.

Secretary

(Seal)

Signature of Holder
of Certificate

(This certificate is strictly not transferable)

34. SATURDAY WORK

For all time worked on a Saturday, payment shall be made as follows:

- (a) Where the employer's business premises are regularly open for normal business and require manning on Saturday, payment shall be made at the rate of double time with a minimum payment as for three (3) hours worked.
- (b) Where the employer's business premises are not open for normal business, payment shall be made at the rate of one and one half times the ordinary rate for the first two (2) hours and double time thereafter.

35. SICK LEAVE

- (a) An employee other than one engaged as a casual or part-time employee mentioned in Clause 16 - Casual Employees, subclause (a), and Clause 28 - Part-time Employees, subclause (b), 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 (1) hour of the commencement of the employee's normal working day, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of absence;
- (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
- (iv) he shall not be entitled in any year to sick leave credit in excess of seventy-six (76) hours ordinary working time;

Provided that, during the first three (3) months of employment, sick leave shall accrue on the basis of six point three-three (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 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.

36. STEWARD

An employee appointed steward in the 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 who 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.

37. 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 four (4) hours worked.

38. SUPERANNUATION

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to three per cent (3%) of ordinary time earnings (as defined) into the fund known as TASPLAN or any other approved fund (as defined) where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees (as defined) as from the first full pay period to commence on or after 17 July 1990 provided that in the case of all eligible casual and part-time employees contributions shall only be made where the employee works at least twelve (12) hours per week, averaged over a fund billing statement month.
- (ii) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

'Eligible Employee' shall mean an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least one (1) months continuous service with the 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 Occupational Superannuation Funds.

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

'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987.

(c) Exemptions

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

- (i) where employees subject to this award represent a minority of the total employees and contributions are already being made into an approved fund (as defined) in respect of the majority of employees in any one establishment; or
- (ii) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 1 August 1988 and occupational superannuation contributions equivalent to three per cent (3%) of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to 1 August 1988 and have continued to be paid since that date; or
- (iii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN.

(d) Procedure for Seeking Exemption

- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 October 1990 for hearing and determination.

Such application shall contain the following information:

- (a) Name of Fund into which the funds are to be paid.
- (b) Evidence of the funds compliance with Commonwealth Operational Standards.
- (c) Summary of Structure and Benefits.
- (d) Level of Administration Charge.
- (e) Any other relevant information.

- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 1 October 1990 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 1 October 1990.
- (v) For the purposes of this clause, the following companies are exempt from contributing to TASPLAN for those employees for whom contributions (equivalent to the amount nominated in subclause (a)) have been made into the fund set out below on or prior to 17 July 1990.

In the case of those employees, contributions shall continue to be made in accordance with subclause (a) into the approved fund set out below:

COMPANY	FUND
Petersville Industries Limited (Incorporated in Victoria), trading as Edgell-Birds Eye (Tasmanian Operations) Devonport Ulverstone Scottsdale	- Petersville Sleigh Productivity Superannuation Fund.

39. TEA MONEY

- (a) An employee required to work overtime for more than one and a half hours shall either be supplied with an adequate meal by the employer or be paid \$4.90 meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Tasmanian 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.

40. TRAVELLING TIME

When an employee is required to work overtime beyond a time when public transport is available the employer shall be required to provide transport or meet the cost of transport to the employee travelling to his home. Where an employee uses his own means of transport he shall be paid a travelling allowance of 9c per kilometre travelled on his return to home by the most direct road route.

