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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T5985 of 1995)

Australian Municipal, Administrative, Clerical and Services Union
(T6107 of 1996)

AERATED WATERS AWARD

FULL BENCH:

PRESIDENT F D WESTWOOD
DEPUTY PRESIDENT A ROBINSON
COMMISSIONER P A IMLACH

15 April 1996

Award variation - nominated private and public sector awards - "Supported Wage System" - application approved - orders to issue - operative from 23 February 96

Award variation - vary meal allowance by deleting existing amount and inserting \$9.25 - application approved - orders to issue operative from the ffpp on or after 22 March 1996

ORDER BY CONSENT:-

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

A NEW CLAUSE IS SUBSTITUTED FOR CLAUSE 8 WAGE RATES AND CLAUSE 21 MEAL ALLOWANCE, (PREVIOUS CLAUSE 9 AGED AND INFIRM WORKERS IS DELETED) AND THE AWARD IS CONSOLIDATED.

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1. TITLE

This award shall be known as the "Aerated Waters Award".

2. SCOPE

This award is established in respect of the trade or manufacture of any one or more of the following, namely:

Aerated Waters
Other Soft Drinks
Fruit Juices
Cider
Cordials
Ginger Beer
Hop and other non-intoxicating beers and/or similar types of beverage with or without alcoholic content.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation on and from 23 February 1996, with the exception of Clause 21 - Meal Allowance which will be operative from the first full pay period to commence on or after 22 March 1996.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 1 of 1993 (Consolidated), No. 1 of 1994 and No. 1 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 employed in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (ii) the Australian Municipal, Administrative, Clerical and Services Union, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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- (iii) the Transport Workers' Union, Tasmanian Branch, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Routine in-line tester' means an employee who in the course of, or in addition to, other duties pursuant to this award shall perform product tests of a routine and/or simple nature as prescribed by the employer. This classification shall not refer to persons under the control of the quality control section or in the laboratory.

'Show Day' means not more than one local Show Day observed on an employees 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 employer.

'Store assistant' means a person who stacks, loads, unloads and does general work in a store.

'Storeman' means a person primarily concerned with materials used in manufacturing operations and whose duties include the receiving and/or issuing of materials into or out of a store in accordance with requisitions.

'Trainee Clerk' means a person employed by the employer under the terms of the Australian Traineeship System and any agreements attached thereto.

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

8. WAGE RATES

1. ADULTS

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate for that classification.

Horizontal
Column (A) Establishments with flow rates of 7,000 litres per hour or more.

Horizontal
Column (B) Establishments with flow rates of less than 7,000 litres per hour.

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CI Beverage Industry Worker Grade 1

This is trainee entry point.

Employees at this level will perform routine duties essentially of a manual nature and to their level of training.

1. Perform general labouring and cleaning duties.
2. Exercise minimal judgement.
3. Work under direct supervision; and
4. May be undertaking structured training so as to enable them to work at C2 Level.

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(A) Establishment	340.70	24.00	364.70
(B) Establishment	333.90	24.00	357.90

C2 Beverage Industry Employee Level 2

An employee at this level will have completed at least three months at level C1 and have satisfactorily completed structured training to enable the employee to perform work within the scope of this level.

Employees will work under direct supervision and will be able to demonstrate competency in allocated functions and/or work stations.

Indicative of the tasks performed at this level are:

1. Manual palletizing/depalletizing.
2. Feeding on and packing from conveyors.
3. Bucket washing.
4. Drum filling assistant.
5. Truck loading.
6. Cleaning.

Employees may be undertaking structured training to enable them to progress to C3.

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(A) Establishment	359.00	24.00	383.00
(B) Establishment	345.40	24.00	369.40

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C3 Beverage Industry Employee Level 3

An employee who has satisfactorily completed structured training to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at C2 and to the level of their training.

Employees at this level are responsible for the quality of their own work subject to routine supervision.

Employees at this level work under routine supervision either individually or in a team environment.

Indicative of the tasks which an employee at this level may perform are the following:

- 1. Operation of automatic equipment including package size changeovers.
- 2. Makes running adjustments.
- 3. Cleans and lubricates equipment and monitors performance.
- 4. Checking duties.
- 5. Truck driving requiring a 'B' licence.
- 6. Fork lift operation requiring a licence.

Employees may be undertaking structured training to enable progression to C4.

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(A) Establishment	370.90	24.00	394.90
(B) Establishment	357.10	24.00	381.10

C4 Beverage Industry Employee Level 4

An employee who has satisfactorily completed training to enable the employee to perform work within the scope of this level.

An employee at this level carries out duties in accordance with C3 but in addition is required to exercise the following:

- 1. The ability to operate three or more automatic machines and to exercise judgement in carrying out basic maintenance.
- 2. Fork lift operation involving checking duties in preparation of loads.
- 3. Line quality control involving the completion of an appropriate training course.

Employees at this level may be undertaking structured training to enable progression to a higher level.

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	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(A) Establishment	384.40	24.00	408.40

C5 Beverage Industry Employee Level 5

An employee who has satisfactorily completed structured training to enable the employee to perform work within the scope of this level.

An employee at this level:

1. Works from complex instructions and procedures.
2. Is responsible for ensuring the quality of their own work output.
3. Assists in the training of other employees.
4. Works with minimum supervision and supervises others.
5. Is required to exercise judgement and take decisions within procedural limits.

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(A) Establishment	394.80	24.00	418.80
(B) Establishment	366.80	24.00	390.80

2. JUNIORS (BEVERAGE INDUSTRY)

The minimum weekly wage rate to be paid to a junior employee (ie employees under 18 years of age) shall be the undermentioned percentage of the weekly wage rate for a Beverage Industry Employee Level 3 at (A) establishments, and for a Beverage Industry Employee Level 2 at (B) establishments.

	%	Weekly Wage Rate \$
(A) Establishment		
At 16 years and under	70	276.40
At 17 years	85	335.70
(B) Establishment		
At 16 years and under	70	258.60
At 17 years	85	314.00

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3. CLERKS

- (a) Adult clerical employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(i) 1st year adult experience	309.80	24.00	333.80
2nd year adult experience	331.40	24.00	355.40
3rd year adult experience	359.80	24.00	383.80
4th year adult experience	370.80	24.00	394.80
5th year adult experience	378.80	24.00	402.80
 (ii) Accountant or chief clerk wholly responsible for office work and who prepares balance sheet and profit and loss account	 478.60	 24.00	 502.60
 (iii) A clerk who is in charge of and responsible for the work of -			
(a) 5 or more employees	425.50	24.00	449.50
(b) 3 or 4 employees	408.70	24.00	432.70
(c) 2 employees	400.70	24.00	424.70

'**Employees**' in (iii) above shall mean any male or female clerk, typist or stenographer and shall include the clerk-in-charge.

- (b) Juniors

The minimum weekly wage rate to be paid to a junior employee shall be the undermentioned percentages of the weekly wage rate prescribed for the second year adult rate to the nearest 10 cents.

	Percentage of 2nd year adult rate %	Weekly Wage Rate \$
Under 16 years of age	40	142.20
16 to 17 years of age	45	159.90
17 to 18 years of age	55	195.50
18 to 19 years of age	70	248.80
19 to 20 years of age	80	284.30
20 to 21 years of age	90	319.90

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(c) 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 respect of which awards of the Tasmanian Industrial Commission are established, experience obtained after reaching the age of 18 years shall be counted as adult experience.

(d) Trainees

The minimum weekly wage rate payable to a trainee clerk (as defined) shall be determined by the following method of calculation:

By taking the appropriate weekly wage rate for a junior clerk as prescribed in subclause 3 - Clerks, (b) - Juniors, of this clause then multiplying it by 39 and dividing it by 52. (39 being the actual number of weeks spent on the job)

PROVIDED that the wage determined by this calculation shall in no case be less than the minimum rate (as varied from time to time) prescribed by the Australian Traineeships System Guidelines.

PROVIDED ALWAYS that the trainee clerk (as defined) wage rate shall be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next 10 cents.

(e) Additional Payments

In addition to the weekly wage rates prescribed herein the following additional amounts per week shall be paid to stenographers, audio- typists, teletypists, accounting machine operators, data processing, tabulating machine, card punch and verifier operators.

	Amount per Week \$
Under 16 years of age	1.10
16 to 17 years of age	1.30
17 to 18 years of age	1.40
18 to 19 years of age	1.60
19 to 20 years of age	2.20
20 to 21 years of age	2.30
21 years and over	3.00

(f) Estimating Service

In estimating the number of years of service of an employee 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.

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4. SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

Subject to this division an employer may engage employees at a supported wage rate (as set out in subclause (c) of this division) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this division does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

PROVIDED FURTHER that this division does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this division:

- (i) **"Supported Wage System"** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **"Accredited Assessor"** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (iii) **"Disability Support Pension"** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (iv) **"Assessment instrument"** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(c) Supported wage rates

Employees to whom this division applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

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

(Provided that the minimum amount payable shall be not less than \$45 per week.)

(d) Assessment of capacity

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

- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of assessment instrument

- (i) All assessment instruments under the conditions of this division, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of assessment

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

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(g) Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this division shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace adjustment

An employer wishing to employ a person under the provisions of this division shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

9. ALLOWANCES

(a) Caustic Soda

Employees handling caustic soda shall be paid **41 cents** per hour extra for time so engaged.

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(b) First Aid Attendant

An employee appointed by the employer as a First Aid Attendant shall be paid the sum of **\$1.55** per day or shift in addition to the wage rate for the classification so prescribed by this award.

An employer shall endeavour to have at least one employee who is trained to render first aid in attendance when work is prepared at an establishment.

(c) The extra daily or hourly rates prescribed in subclause (a) and (b) of this clause shall be paid irrespective of the time on which the work is performed and shall not be subject to any premium or penalty additions.

(d) Casual Work

A casual employee shall mean and be deemed to be an employee engaged for a period of less than one full working week. Such casual employees' rate shall be the ordinary wages herein provided for similar weekly employees plus 20 percent additional. The minimum payment shall be equivalent of four hours worked.

The hours of labour and conditions as to time off shall be the same for 'casual' as for other employees. Where a casual employee is worked outside the ordinary hours of employment the appropriate overtime rates shall apply as prescribed by Clause 23 - Overtime, of this award based on the casual rate as herein prescribed.

10. ANNUAL LEAVE

(a) A period of 152 hours paid leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave) as an employee on weekly hiring in any one or more of the occupations to which the award applies.

(b) Annual Leave Exclusive of Public Holidays

(i) Subject to this subclause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 18 - Holidays and Sundays, of this award, and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

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

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(c) Broken Leave

Annual leave shall be given and taken in a continuous period.

PROVIDED that by agreement between an employee and employer, annual leave may be taken in two or more separate periods.

PROVIDED ALWAYS that when annual leave is split, one period of leave shall not be less than two weeks. Any such agreement shall be by genuine consent and in writing.

(d) Calculation of Continuous Service

(i) For the purpose of this clause, service shall be deemed to be continuous notwithstanding:

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

(ii) In cases of personal sickness or accident or absence with reasonable cause the employee to become entitled to the benefit of this subclause shall inform the employer in writing, if practicable, within 24 hours of 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 his absence.

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

(iv) In cases of individual absenteeism such notice shall be given in writing to the employee concerned, but in cases of concerted or collective absenteeism notice may be given to employees by the posting up of a notification in the plant in the manner in which general notifications to employees are usually made in that plant.

(v) A notice to an individual employee may be given by delivering it to him personally or by posting it to his last recorded address in which case it shall be deemed to have reached him in due course of post.

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(vi) In calculating the period of 12 months' continuous service of any such absence as aforesaid shall not, except to the extent of not more than 14 days in a twelve-monthly period in the case of sickness or accident, be taken into account in calculating the period of 12 months' continuous service.

(e) Calculation of Service

Subject to the provisions of subclause (a) of this clause, service before the date of this award shall be taken into consideration for the purpose of calculating annual leave, but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or a payment in lieu thereof has been allowed or made under any previous award made in this industry.

(f) Leave to be Taken

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

(g) Time of Taking Leave

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

(h) Leave Allowed Before the 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 case a further period of annual leave shall not commence to accrue until after the expiration of 12 months in respect of which leave had been taken before it accrued.

(i) Where leave has been granted to an employee pursuant to subclause (h) of this clause 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 one complete week of five working days of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable upon the termination of the employment one/fifty-second of the amount of wage paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed by Clause 18 - Holidays and Sundays, of this award.

(j) Proportionate Leave on Termination

(i) If after one week's continuous service in any qualifying twelve-monthly period, an employee on weekly hiring leaves his employment or his employment is terminated by the employer, the employee shall be paid at his ordinary rate of wage for 3.08 hours in respect of each completed week of

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five working days of continuous service, the service in each case being service in respect of which leave has not been granted hereunder.

- (ii) Where an employee's service is terminated for reasons other than misconduct and the employee has given not less than 8 weeks' continuous service he shall be paid a loading as referred to in subclause (k) of this clause on a pro rata basis in the proportion that his service bears to a full year's service at the rate of one week's pay for a full year's service he shall be entitled to a week's pay as a loading in respect of that period without regard for the reasons for termination.

- (k) Payment for Period of Leave

Each employee before going on leave shall be paid 4 weeks' wages, except an employee taking his leave pursuant to subclause (c) of this clause, who 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 periods. Payment for the first week of leave taken in respect of any qualifying twelve monthly period shall be subject to a loading of one week's pay for a full year's service. Where the period includes a full year's service he shall be entitled to a week's pay as a loading in respect of that period without regard for the reasons for termination.

11. BLOOD DONORS

A weekly employee who attends a recognised clinic for the purpose of donating blood during working hours shall (subject to normal manning requirements) be allowed the necessary leave without loss of pay.

PROVIDED that he shall not be entitled to payment with respect to time lost in excess of two hours on each occasion. An employee shall notify his employer as soon as possible of the time and date upon which he is intending to be absent for the purpose of donating blood.

12. CALL BACK

An employee recalled to work overtime after leaving his employer's premises or business (whether notified before or after leaving the premises) shall be paid a minimum of four hours work at the appropriate rate for each time he is so recalled.

PROVIDED that, except in the case of unforeseen circumstances arising, the employee shall not be required to work a full 4 hours if the job he was required to perform is completed within a shorter period. This clause shall not apply in cases where it is customary for an employee to return to his employer's premises to perform a specific job outside his ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. Overtime worked in accordance with this clause shall not be regarded as overtime for the

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purpose of subclause (d) of Clause 23 - Overtime, of this award where the actual time worked is less than four hours on such recall or on each of such recalls.

13. CLOTHING AND BOOTS ETC.

- (a) Where it is necessary for an employee to wear protective clothing, boots or clogs, they shall be provided by the employer. The question as to whether protective clothing or boots or clogs are necessary for any employee shall be settled by agreement between the employer and the claimant union, and in default of such agreement, by the Tasmanian Industrial Commission.
- (b) Where employees are required by the employer to wear special clothing supplied by the employer, then the employer shall either launder such special clothing or make other alternative arrangements by agreement with the union.

14. 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, grandchild, be entitled upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

PROVIDED that no payment shall be made in respect of an employee's rostered days off.

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

PROVIDED ALWAYS that this clause shall have no operation while the period of entitlement to leave under it coincided 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.

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 changes sought shall not seek to alter provisions reflecting state standards.

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- (ii) The majority of employees affected by the change must genuinely agree to the change.
 - (iii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iv) 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.
 - (v) The relevant union or unions must be a party to the agreement.
 - (vi) 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) (i) A properly completed agreement shall be forwarded to the Industrial Commission.

PROVIDED that the member of the Commission responsible for the award is satisfied that the agreement is not contrary to the public interest, and that it is consistent with the wage fixation principles, the agreement shall be accepted by the member of the Commission as an agreement arising out of an award as contemplated in Section 55(4) of the Act. If the member responsible is not so satisfied the member shall convene a conference of the parties for the purpose of clarifying and/or substantiating the agreement.

- (ii) If the agreement is accepted the parties shall be notified in writing and provided with a copy of the agreement and the agreement shall be forwarded to the Registrar to be filed.
- (iii) An agreement having been accepted by a member of the Commission shall, from the date of notification referred to in d(ii), to the extent of any inconsistency, take precedence over the award.

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- (e) The employer, upon being notified by the Commission of the acceptance of the agreement, shall provide a copy of the agreement to each affected employee.

16. EXHIBITION OF AWARD

This award shall be exhibited by each employer on his premises in a place accessible to all employees.

17. FIRST AID KIT

A first aid kit is now required by law and shall be provided by the employer in each factory and in the event of an accident occurring the first aid attendant shall be allowed reasonable time to attend to employees concerned in such accident.

18. HOLIDAYS AND SUNDAYS

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

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Eight Hour Day or Labour Day, Union Picnic Day, Sovereign's Birthday, Christmas Day, Boxing Day and Show Day (as defined).

In addition to the abovenamed holidays, where a public holiday is proclaimed or gazetted to have effect and is generally observed throughout the whole of the State, that day shall be observed as a holiday.

PROVIDED that this shall not have the effect of providing two holidays for the same reason if that holiday is otherwise referred to within the terms of this clause.

- (b) If any of the said named days fall on a weekend and no working day is generally observed as such a day, a day in lieu thereof shall be allowed to each employee during the following week, and shall in respect of such employee be treated as if it were a public holiday.
- (c) No deduction shall be made from the wage of an employee engaged by the week because of absence from work on a holiday unless without permission or reasonable excuse he or she stays away on the day next preceding or next succeeding the holiday.
- (d) No deliveries, other than to sporting functions and other special functions, shall be made on a Sunday, or on any holiday except New Year's Day, Easter Monday and Regatta Day (Hobart).
- (e) All work performed on Sundays shall be paid for at the rate of double time and all work performed on holidays provided for by this award shall be paid for at the rate of double time and a half with a minimum payment of four hours in either case.

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- (f) In Southern Tasmania, Union Picnic Day shall be observed on Hobart Regatta Day each year. For the purposes of this subclause Southern Tasmania includes Oatlands and all towns south of Oatlands but excluding areas excluded in the State Proclamation regarding this day.

In Northern Tasmania, Union Picnic Day shall be observed on Recreation Day. For the purpose of this subclause Northern Tasmania includes all towns north of Oatlands.

An employee in the employ of one employer shall not be entitled to receive in any one calendar year both days as Union Picnic Day holidays but shall only be entitled to one of them.

- (g) Where the service of a weekly employee is terminated through no fault of the employee within one week of a holiday or holidays and that employee is re-employed within one month of the said holiday or holidays, the employee shall be entitled to payment for the said holiday or holidays.

PROVIDED that such employee has been employed for a period of three months prior to the termination.

19. HOURS AND SHIFT WORK

- (a) The ordinary hours of work shall be an average of 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) This clause shall be read subject to and where necessary, deemed to be modified to the extent of any existing agreed working hours arrangement in place as of the date of this award.
- (c) Subject to any enterprise agreements, the ordinary hours of work for day workers shall not exceed eight hours per day (exclusive of meal interval) Monday to Friday between the hours of 6.00 am to 6.00 pm.
- (d) Notwithstanding anything herein contained, by arrangement between an employer, the relevant union and the majority of employees in the plant or work section or sections concerned ordinary hours not exceeding twelve on any day may be worked at ordinary time subject to:
- (i) the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on twelve hour shifts;
 - (ii) proper health monitoring procedures being introduced;
 - (iii) suitable roster arrangements being made; and
 - (iv) proper supervision being provided.

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- (e) An employee shall not be required to work more than 5 hours without a break for a meal.

PROVIDED that an employee may work up to 6 hours without a break for a meal in the following circumstances:

- (i) Where canteen or other facilities are limited requiring meal breaks to be staggered; or
 - (ii) Where it is necessary to do so in order to meet a requirement for continuity of operations; or
 - (iii) For the purpose of performing maintenance work which can only be done whilst the plant is idle.
- (f) Subject to the requirements of an enterprise agreement, the time fixed for starting or finishing work may be altered on the giving of 48 hours notice.
- (g) Shift Work
- (i) The ordinary hours for shift work may be worked in two or three shifts but shall not exceed an average of 152 hours over a 28-day cycle.
 - (ii) Shift workers shall be allowed 20 minutes crib time which shall be counted as time worked.
 - (iii) Shift workers whilst on afternoon shift, that is any shift finishing after 6.00 pm and at or before midnight shall be paid 15 percent more than the ordinary rate for such shift.
 - (iv) Shift workers may be employed on a non-rotating night shift, that is a shift finishing subsequent to midnight and at or before 8.00 am on Saturday and shall be paid 30 percent more than the ordinary rate.

20. JURY SERVICE

An employee required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service.

An employee shall notify his employer as soon as possible of the date upon which he is required to attend for jury service. Further, the employee shall give his employer proof of his attendance, the duration of such attendance and the amount received in respect of such service.

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21. MEAL ALLOWANCE

An employee required to work overtime in excess of one hour and a half after the usual finishing time shall either be supplied with a meal or be paid \$9.45 by the employer and a further meal allowance of \$9.45 after a further four hours overtime has been worked.

22. MIXED FUNCTIONS

- (a) Where an employee is called upon to perform two or more classes of work in any one day, he or she shall, for the purpose of assessing wages to be paid, be deemed to have worked the day at the class for which the highest rate of wages is prescribed.
- (b) A higher paid employee shall, when necessary, temporarily relieve a lower paid employee without loss of pay.
- (c) This clause shall not apply where an employee is performing such work as part of a structured training program.

23. OVERTIME

- (a) Subject to the provisions of any enterprise agreement, all work performed in excess of 8 hours per day or outside the spread of ordinary hours shall be overtime and shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (b) An employee required to work overtime on Saturday shall be paid at least 4 hours at the appropriate rate except where such overtime is continuous with overtime commenced on the day previous.
- (c) In computing overtime each day or shift shall stand alone.
- (d) If an employee is so long on overtime duties that he has not ten consecutive hours rest between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day, he shall be allowed at least ten consecutive hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until he has had at least ten consecutive hours rest.

The provisions of this subclause shall apply in the case of shift workers as if eight hours were established for ten hours when overtime is worked:

- (i) for the purpose of changing shift rosters; or
- (ii) where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or
- (iii) where a shift is worked by arrangement between the employees themselves.

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- (e) An employee working overtime after ordinary finishing time shall be allowed a crib time of twenty minutes without deduction of pay after each four hours of overtime worked if required to work beyond such crib break.

Unless the period of overtime is less than 1½ hours an employee before starting overtime after working ordinary hours shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand.

PROVIDED that the employer shall not be required to make any payment in respect of any time allowed in excess of 20 minutes.

- (f) When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available the employer shall provide him with a conveyance to reach a point where reasonable means of transport are available or if no such transport is available, to his home, or shall pay him ordinary time for the time reasonably occupied in reaching his home.
- (g) An employer and an employee may agree that time off may be taken in lieu of overtime. Such time off to be at the penalty equivalent. Provided that any agreement must be by genuine consent and in writing.

24. PARENTAL LEAVE

Parts B, C and D of this clause shall be operative on and from 1 January 1993.

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.

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

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'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).
- (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).

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

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(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, 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.

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(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 (4) 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.
- (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.

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- (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

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

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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
 - (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.

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(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 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.

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- (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
 - Adoption leave is unpaid leave.
- (b) Definitions
 - For the purpose of this part:

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'Employee' includes a part-time employee but does not include an employee 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 step-child 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
 - (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.

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(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.
- (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

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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 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,

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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.

(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.

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- (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

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.

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- (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 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.

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- (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.

(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

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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.

(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.

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- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

25. PAYMENT OF WAGES

- (a) Except upon termination of employment, all wages including overtime, shall be paid on any day other than Friday, Saturday or Sunday in each week.

PROVIDED that in the event that a day observed as a holiday falls on pay day, wages shall be paid on the day prior to the usual pay day. Wages may be paid in cash, by cheque or electronic funds transfer. By agreement between an employer and the majority of employees, wages may be paid fortnightly rather than weekly.

Should an employer wish to change the method of payment, the terms and conditions under which the change is made shall be negotiated at an enterprise level.

- (b) Employees including casuals who are paid their wages at any time other than during their working time shall, if kept waiting more than 15 minutes, be paid at overtime rates for all such waiting time.
- (c)
 - (i) When a week's notice of termination of employment has been given payment of all wages and monies due shall be made at the employee's normal place of employment prior to the employee leaving such place of employment. If kept waiting after ceasing time overtime rates shall be paid for all such waiting time.
 - (ii) For the purpose of this subclause waiting time shall mean from ceasing time until the actual time all wages and other monies due are received by the employee.

PROVIDED that any overtime earnings in respect of the day of termination or other payments which cannot be calculated prior to the termination of the employee's ordinary hours on the last day or shift may be paid on a subsequent working day, or by arrangement, may be posted to the employee.

26. PREFERENCE OF EMPLOYMENT

- (a) Preference in engagement of employees shall be given equally to persons in the following categories who are available and suitable:
 - (i) members of the Tasmanian Branch of the appropriate union;
 - (ii) persons who are prepared to give forthwith a written undertaking to apply to join the Tasmanian Branch of the appropriate union within 14 days;
 - (iii) conscientious objectors.

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If there is more than one person applying for employment within any or all of these categories, the employer shall have freedom to select any one or more of such persons in his or its discretion.

- (b) Conscientious objectors shall pay a sum equivalent to the subscription to the appropriate union, to a charity to be agreed upon between the person concerned and the appropriate union and in default of agreement to consolidated revenue.
- (c) This clause shall not apply in respect of engagement of employees in the following categories:
 - (i) employees sought for confidential or managerial positions,
 - (ii) owners of businesses or their spouses.

27. REDUNDANCY

Where a company intends to act on any feasibility study which could result in a reduction to staffing levels, as a consequence of redundancy the company shall if possible, at least three calendar months before taking any action, advise the appropriate union of the situation, providing all relevant details and arrange discussions with officers of the appropriate union.

PROVIDED that this clause shall not apply in circumstances where staff leaves often as a result of seasonal change.

28. SHOP STEWARDS

Where an employee is appointed as a shop steward, his name and the section or sections with which he is concerned shall be given to the employer in writing, and the employer shall recognise the steward as a union representative.

A shop steward's function shall be restricted to the application of the appropriate award and working conditions.

29. SICK LEAVE

An employee on weekly hiring who is absent from his work on account of personal illness or injury by accident not arising out of and in the course of his employment shall be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:

- (a) He shall not be entitled to paid leave of absence for any period in respect of which he is entitled to workers' compensation.
- (b) He shall, within 24 hours of the commencement of such absence, unless proved to the satisfaction of his employer that such was not reasonably practicable (or in the

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event of a dispute, the Tasmanian Industrial Commission), inform the employer of his inability to attend for duty and, as far as practicable, state the nature of the injury or illness and estimated duration of the absence.

- (c) He shall prove to the satisfaction of his 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 duty on the day or days for which sick leave is claimed.
- (d) He shall not be entitled in any year to sick leave in excess of 76 hours of 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 month of service with the employer.

- (e) Sick leave shall accumulate from year to year and any balance not taken shall be available subject to the provisions of subclauses (a), (b), (c) and (f) of this clause.
- (f) Single Day Absences
 - (i) Any employee shall be allowed three single days such leave in any one qualifying year without a medical certificate.

PROVIDED that any single day taken continuous with a weekend, public holiday or rostered day off shall require evidence of genuine illness or incapacity.

- (ii) Where an employee has been paid three single days sick pay as provided in paragraph (i) above, he shall not be entitled to payment for any further single days off sick unless he produces to the employer a certificate of a duly qualified medical practitioner that in his, the medical practitioner's opinion, the employee was unable to attend for duty on account of illness or on account of injury by accident. In lieu of a medical certificate an employer may agree to accept a statutory declaration.

In the event of a dispute the matter shall be decided by the Tasmanian Industrial Commission.

- (g) Payment on Termination

Upon the termination (except for misconduct) of an employee with at least 12 months continuous service with the employer, the employer shall pay to the employee the value of any untaken accumulated sick leave which accrued on or after 4 December 1980, together with the value up to a maximum of 80 hours of any untaken accumulated sick leave which accrued prior to 4 December 1980.

NOTE: accumulated sick leave does not include sick leave for current year of service.

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30. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of enterprises and to enhance the career opportunities and job security of employees subject to the award.
- (b) Consistent with the objectives of subclause (a) herein, employers, employees and the union shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.
- (c) An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training consistent with the classification structure of the award.

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

31. TERMS OF EMPLOYMENT

- (a) Except as provided in Clause 9 - Allowances, subclause (d) of this award, employment shall be on a weekly basis.
- (b) Employees shall perform such work as the employer shall from time to time reasonably require and an employee not attending for or not performing his duty shall lose his pay for the actual time of such non-attendance or non-performance.
- (c)
 - (i) Except as to casual employees, employment shall be terminated by a week's notice on either side, given at any time during the week; or by the payment of or forfeiture of a week's wages from any monies due under this award, as the case may be.
 - (ii) For the purpose of this award, notice given within a period not exceeding 3 hours after the rostered starting time on any working day shall be regarded as a full day's notice.

PROVIDED that notice shall not be given on either side whilst an employee is on paid sick leave, annual leave or long service leave except in the case of misconduct.

- (d)
 - (i) This clause shall not affect the right of an employer to deduct payment for any day or portion thereof during which the employee is suspended as a result of refusal of duty, inefficiency during the first 7 days of employment, neglect of duty or misconduct on the part of the employee, or to deduct payment for any day during which the employee cannot be usefully employed because of any strike or through any breakdown of machinery or due to any cause for which the employer cannot reasonably be held responsible.

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Any suspended employee who informs his employer within a period of 24 hours after he is suspended that he prefers to terminate his employment without notice, shall be paid all monies due including annual leave up to the time he is notified of his suspension.

- (ii) Any dispute arising from any such suspension shall be referred to the Tasmanian Industrial Commission.
 - (iii) This clause shall not affect the right of an employer to dismiss an employee without notice for refusal of duty, inefficiency during the first 7 days of employment, neglect of duty or misconduct, and in such cases the wages shall be payable up to the time of dismissal only.
- (e) An employee shall within 3 days of the commencement of any absence inform his employer, or otherwise in the absence of notification he shall be deemed to have abandoned his employment without notice.

32. TIME AND WAGES SHEET

- (a) All employers shall keep a time and wages sheet, which may either be combined or separate and which shall be entered in ink showing the hours worked each day and wages paid to each employee.
- (b) The time and wages sheet shall, as to entries herein, in respect of employees covered by this award, be open for inspection to a duly accredited official of the union during the usual office hours at the place of employment.
- (c) Time and wages records shall be kept available in accordance with the appropriate statutory requirements, and in any case for not less than twelve months.

33. TRAINEE CLERK (as defined)

- (a) Trainee clerk (as defined) shall be engaged for a period of twelve months as a full-time employee.

PROVIDED that a trainee shall be subject to a satisfactory probation period of up to one month.

- (b) Where possible traineeship positions should be additional to normal staff numbers.

PROVIDED that no existing weekly employees shall be displaced by a trainee.

- (c) A trainee clerk (as defined) will receive on-the-job training by the employer as specified in the training agreement (as defined) and off-the-job training will be provided by a training institution/organisation approved by the Training Authority of Tasmania.

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- (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 training shall be allowed without loss of continuity of employment.
- (f) Where an employer continues the employment of a trainee clerk (as defined) 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 section, overtime is involved in the operation of that section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the union.
- (i) Trainees shall not perform higher duties unless in the course of their traineeship.
- (j) 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 trainee clerks (as defined) in the time of industrial disputes.

34. UNION OFFICIALS

The Secretary and accredited representatives of the appropriate union may enter the employer's premises for the purpose of interviewing employees on legitimate union business at a time reasonably convenient to the employer, provided he first reports to the employer and obtains approval to enter, which approval shall not be withheld except for a reasonable cause.

P A Imlach
COMMISSIONER

15 April 1996