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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

**Wage Rates – State Wage Case July 2004 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002004 – Safety Net Review – Award rates to be increased by \$19 per week – Wage related allowances increased by 3.5% - Meal allowances increased to \$12.70 – Supported Wage increased to \$61 per week – Operative date ffpp 1 August 2004 – State Minimum Wage determined at \$467.40 – s.35(1)(b)**

**INSURANCE AWARD**

**ORDER BY CONSENT**

**No. 2 of 2004  
(Consolidated)**

CLAUSES 1 AND 2 OF PART III – WAGES AND RELATED MATTERS AND CLAUSE 1 OF PART IV – ALLOWANCES ARE VARIED AND THE AWARD IS CONSOLIDATED

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## **PART I - APPLICATION AND OPERATION OF THE AWARD**

### **1. TITLE**

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

### **2. INDEX**

#### SUBJECT MATTER

#### CLAUSE NO

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### **3. SCOPE**

This award is established in respect of:

- (a) a fire and/or life insurance society or company;
- (b) an accident, marine and/or general insurance society or company;
- (c) a health insurance society or company, a medical insurance society or company or a hospital insurance society or company.

### **4. APPLICATION**

Wages and conditions for employees employed in fire /or life, accident, marine and/or general insurance society or company shall be in accordance with the Insurance Industry Award 1998 of the Australian Industrial Relations Commission.

### **5. DATE OF OPERATION**

This award shall come into operation from the first full pay period to commence on or after 1 August 2004.

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## **6. SUPERSESSION**

This award incorporates and supersedes the Insurance Award No. 1 of 2004 (Consolidated).

## **7. AWARD INTEREST**

(a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:

- (i) the Australian Municipal, Administrative, Clerical and Services Union;
- (ii) the National Union of Workers, (Central Branch);
- (iii) the Shop, Distributive and Allied Employees Association, Tasmanian Branch.

(b) the following organisation is deemed to have interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:

the Tasmanian Chamber of Commerce and Industry Limited.

(c) the following organisation is deemed to have interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labor Council

## **PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS**

### **1. EMPLOYMENT CATEGORIES**

(a) Except in the case of casuals, employment under this award shall be by the week.

(b) Casual employees

- (i) **'Casual employee'** means any person who is employed on a casual basis and includes any person who is employed for a period not exceeding five days at any one time. Casual employees shall be engaged by the hour.
- (ii) A casual employee for working ordinary time shall be paid per hour 1/38th of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20 percent of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

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(c) Part Time Employees

- (i) Employees may be engaged to work for less hours per day or week than a full-time employee subject to the following limitations:
  - (1) The ordinary hours of a part-time employee shall not exceed 120 hours nor be less than 32 hours in any four week period.
  - (2) The ordinary hours shall not exceed eight nor be less than four on any one day. Part-time employees for ordinary hours shall be paid 1/38th of the weekly rate for each hour worked. A part-time employee shall be entitled to pro rata annual leave, sick leave and public holidays in the same ratio as their actual weekly ordinary hours bear to 38.
- (ii) Part-time employees shall not comprise more than 20 percent of the total workforce covered by the award in any establishment of an employer.
- (iii) Part-time employees shall be entitled to all other provisions of the award.

**2. TERMS OF EMPLOYMENT**

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

**3. TERMINATION OF EMPLOYMENT**

- (a) Except in the case of casuals, employment may be terminated only by the giving of one week's notice by either party or by the payment or forfeiture of one week's wages as the case may be.
- (b) Casual employment may be terminated by one hour's notice.
- (c) Nothing in this clause shall limit the right of the employer to instantly dismiss an employee for malingering, misconduct or neglect of duty, provided that such malingering, misconduct or neglect of duty warrants instant dismissal, in which case wages shall be paid up to the time of dismissal only.

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**PART III - WAGES AND RELATED MATTERS**

**1. WAGE RATES**

(a) Adult employees shall be paid in accordance with the following classification structure.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Clerical and Administrative Officer				
Grade 1 (as defined)	86.00	358.80	142.00	500.80
Grade 2 (as defined)	91.00	379.70	142.00	521.70
Grade 3 (as defined)	95.00	396.30	142.00	538.30
Grade 4 (as defined)	101.00	421.40	144.00	565.40
Grade 5 (as defined)	108.00	450.60	144.00	594.60

(b) Junior Employees

Junior employees shall be paid the undermentioned percentage of the appropriate adult weekly wage rate dependent upon the actual work performed.

	(1) %	(2) %
16 years of age and under	50	55
17 years of age	60	65
18 years of age	70	75
19 years of age	80	85
20 years of age	90	95

- (1) This scale applies to junior employees who have completed Year 10 schooling and who meet the minimum qualification standards of Grade 1.
- (2) This scale applies to junior employees who have completed Year 11 and/or Year 12 schooling in a relevant discipline and/or who have completed a relevant traineeship.

**2. MINIMUM WAGE**

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Division C - Supported Wage System, is \$467.40 per week.

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- (ii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.
- (c) How the Minimum Wage Applies to Juniors
- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
  - (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T11548 of 2004) and all previous safety net and state wage case adjustments.

### **3. CLASSIFICATION DESCRIPTORS**

#### **'Clerical/Administrative Officer Grade 1 (C/A 1)'**

Clerical and Administrative Stream

An employee entering the administrative workforce of a Health Insurance Company at a base level who will be provided with induction and training in the broad operations of the Company.

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#### Duties

A C/A 1 who undertakes administrative tasks that require minimal training and are basic in nature.

Indicative of the tasks identified above would be:

- photocopying
- operation of facsimile
- mailing, filing and collating
- messenger work
- reception duties
- routine clerical work
- basic keyboard and data entry

#### Responsibilities

A C/A 1 should be closely supervised and have limited discretion in undertaking the duties at this level.

#### Qualification

The entry level requirement for the recruitment of C/A 1's will be established at the discretion of the employer. As a guide, C/A 1's will be required as a minimum, to have successfully completed Grade 10, Level II English and Mathematics in order to satisfy the literacy and numeracy requirements of clerical work.

#### Training

An employee will undertake induction training and be provided with a structured programme to develop skill relevant to work at this level.

The training programme for C/A 1's should also develop skill, over a period of time, to allow the employee to work competently at Grade C/A 3.

#### Progression

Progression to Grade C/A 3 will be on the basis of a C/A 1 having the required skill and competency standards and on being selected on merit for the position when a position at Grade C/A 3 becomes available.

### **'Clerical/Administrative Officer Grade 2 (C/A 2)'**

#### Assessor Stream

An employee entering the claims assessment section who will be provided with up to three months structured training in the assessor stream.



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#### Duties

A C/A 2 will undertake basic duties within the assessment range whilst undertaking structured training in the following functions:

- assessment of medical/paramedical claims
- changes to member database
- operation of receipting system
- balancing and banking cash
- customer enquiries
- selling company products

#### Responsibility

A C/A 2 should be closely supervised and have limited discretion in undertaking the duties performed at this level.

#### Qualifications

The entry level requirement for the recruitment of Trainee Assessor (C/A 2) will be established at the discretion of the employer. As a guide a trainee will be required as a minimum to have completed Grade 10, Level II English and Mathematics in order to satisfy the literacy and numeracy requirements of assessor work.

#### Training

A Trainee Assessor (C/A 2) will undertake a range of training as indicated above to develop the skills required in the assessor stream.

#### Progression

Progression to a higher position in the stream will be on the basis of the trainee acquiring the required skill and competency standards and on being selected on merit for a position when a position becomes available.

### **'Clerical/Administrative Officer Grade 3 (C/A 3)'**

#### (a) Clerical and Administrative Stream

An employee who undertakes a broad range of clerical and/or keyboard work at a level higher than that prescribed for a C/A 1.

#### Duties

An employee undertaking routine clerical and/or keyboard duties which require work methods that are well established and operate to clear procedures and methods.

Indicative of the tasks identified above would be:

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reception/enquiries  
information recording  
mail handling  
registry  
routine calculation  
keyboard work  
basic data entry and manipulation  
cash handling  
banking/accounting records  
basic record keeping  
checking of simple transactions

#### Responsibilities

A Grade C/A 3 Clerk will undertake the above duties as directed and in doing so, will exercise limited discretion whilst organising own workload.

#### Qualifications

A Grade C/A 3 Clerk will have the skill necessary to perform competently and/or all the duties required, given appropriate training as determined by the employer.

The qualifications required to perform the duties at this level to the employer's standard will be at the discretion of the employer.

#### Training

An employee will undertake a structured programme of training to develop the skill required to perform competently any of the duties required at this level.

The training programme of Grade C/A 3 Clerks may also develop, over time, skill to allow an employee to work competently at Grade C/A 4 (Clerical and Administrative Stream).

#### Progression

Progression to Grade C/A 4 will be on the basis of a Grade C/A 3 obtaining the required skill and competency standards and on being selected on merit for a position when a position at the higher level becomes available.

#### (b) Assessor Stream

An employee who undertakes a broad range of duties in the assessor stream, at a level below that required of a Clerical and Administrative Officer Grade 4 (Assessor Stream).

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#### Duties

An employee undertaking the range of duties required within this definition.

Indicative of the tasks identified and required at this level are:

- assessment of medical/paramedical claims
- handle member enquiries and transactions
- process member contributions
- balancing of cash individual/Branch
- sale of Company products
- promotional activities

#### Responsibilities

A C/A 3 in the Assessor Stream will undertake the above duties under the supervision of Management or of a more highly classified Assessor and is expected to work autonomously and exercise appropriate personal discretion within their range of training and may provide guidance to a C/A 2.

#### Qualification

A C/A 3 in the Assessor Stream will have the skill necessary to perform competently, any and/or all of the duties required at this level and shall have completed the Assessor training.

#### Training

An employee at this level will undertake a structured programme of training to develop all the required skills to perform the range of functions required at this level as determined by the employer.

A structured training programme may also be undertaken over time to allow acquisition of the skills required to work competently at higher level in the Assessor Stream.

#### Progression

Progression to higher levels in this stream will be on the basis of an employee at this level obtaining the required skill and competency standards and on being selected on merit for a higher position upon such a position becoming available.

### **'Clerical and Administrative Officer Grade 4 (C/A 4)'**

#### (a) Clerical and Administrative Stream

An employee who undertakes more complex clerical and/or keyboard work in a manner that reflects the administrative requirements of the employer.

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Indicative of the tasks identified above would be:

preparing correspondence	stock control
meeting services	procedural accounting
travel arrangements	payroll
complex word processing	purchasing/sales
audio transcription	handles complex customer enquires
data processing	research
stenographic work	customer service
computer operation	inventory control
all cash handling functions	training
supervision	

#### Responsibilities

An employee at this level will undertake the above duties either individually or in a team environment under limited supervision and in exercising discretion, to the level of their knowledge and competence, will be directly accountable for the standard of their work and may be required to provide supervision guidance and/or training for C/A 1 and Grade C/A 3 Clerks.

#### Qualifications

A C/A 4 will be required to have the skill necessary to perform the duties of any position competently and to the employer's standards at this level.

#### Training

An employee will undertake a structured programme of training in order to develop the skill required to operate competently at this level.

The training programme of a C/A 4 may also include the development, over time, of the skills necessary to work at Grade C/A 5 (Clerical and Administrative Stream).

#### Progression

Progression to Grade C/A 5 will be on the basis of a Grade C/A 4 obtaining the required skill and competency standards and on being selected on merit for a position when a position at the higher level becomes available.

#### (b) Assessor Stream

An employee who undertakes a range of duties within the Assessor Stream and who predominantly undertakes the role of assessing Hospital claims.

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#### Duties

A C/A 4 (Assessor Stream) undertakes all of the tasks described for a C/A 3 (Assessor Stream) along with some or all of the following indicative additional duties:

Either:

assessment of hospital claims  
operation of a PC  
provision of training

Or:

performance of the duties in C/A 3 (Assessor Stream) on a Branch roster.

#### Responsibilities

An employee at this level will undertake the above duties under minimal supervision and will exercise personal discretion in the performance of those duties under the guidance of management.

#### Qualifications

A C/A 4 (Assessor Stream) will have the skill and training necessary to competently perform the range of duties required at this level as determined by the employer.

#### Training

An employee at this level may be required to undertake structured training designed to allow a person to meet the technical and/or supervisory demands of the employer in working at this level.

An employee at this level may be provided with structured training which, over time, will qualify the employee to progress to a management position or to a position at C/A 5 (Assessor Stream).

### **'Clerical and Administrative Officer Grade 5 (C/A 5)'**

#### (a) Clerical and Administrative Stream

An employee at this level will undertake, at a senior level, specialised clerical functions at a level higher than a Grade C/A 4 (Clerical Stream).

#### Duties

An employee who undertakes specialist clerical duties requiring technical expertise and knowledge.

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Indicative of the tasks identified above are:

research/investigation/reporting	personnel
interviewing	bookkeeping
presentation to groups	provision of training
conduct of meetings	problem resolution
computer based accounting	data interpretation
liaison with clients	product sales
payroll management	

#### Responsibilities

An employee at this level performs complex clerical work under limited indirect supervision and, in exercising discretion at the level of their knowledge and competence, will be accountable for the standard of their work and the work of those employees working with them.

A Grade C/A 5 will be responsible for assessing training needs in their area of expertise and, where appropriate, providing relevant structured training.

A Grade C/A 5 may supervise staff working in their functional area.

#### Qualification

A Grade C/A 5 will be required to have the necessary technical and/or supervisory skill experience required by the employer in working at this level.

#### Training

A Grade C/A 5 may undertake structured training designed to allow a person to meet the technical and/or supervisory demands of the employer in working at this level.

A Grade C/A 5 may be provided with training which, over time, will allow them to progress to a management position.

#### (b) Assessor Stream

An employee who undertakes a range of duties within the Assessor Stream and who predominantly undertakes the role of assessing hospital claims.

#### Duties

A C/A 5 (Assessor Stream) undertakes all of the tasks described for an employee classified at C/A 4 (Assessor Stream) and is required to undertake supervision in a Branch of other employees in the Assessor Stream.

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#### Responsibilities

An employee at this level will undertake the above duties under minimal supervision and will exercise personal discretion in the performance of those duties under the guidance of management.

#### Qualifications

An employee at this level will have the skill and training necessary to competently perform the range of duties required at this level as determined by the employer.

#### Training

An employee at this level may be required to undertake structured training designed to allow a person to meet the technical and/or supervisory demands of the employer in working at this level.

An employee at this level may be provided with structured training which, over time, will qualify the employee to progress to a management position.

### **4. 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.

### **5. PAYMENT OF WAGES**

- (a) Payment of wages shall be weekly, not later than Thursday in each week by cheque, cash or by electronic funds transfer into an employee's nominated account at a bank, building society or credit union of the employee's choice.
- (b) Where the employer utilises electronic funds transfer as a method of payment of wages, the employer shall be responsible for meeting the cost of one deposit into and one withdrawal from an employee's account each pay period.
- (c) By agreement between an employer and a majority of employees in his establishment, wages may be paid fortnightly instead of weekly but not until at least two months has transpired from the date upon which employees so agree.

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## **6. SUPERANNUATION**

### (a) Definitions

**'The fund'** shall mean TASPLAN or an alternative fund provided that such alternative fund is approved in accordance with the Federal Legislation for Occupational Superannuation Funds.

**'Eligible employee'** shall mean an employee, whether weekly, part-time or casual, who has had at least three months continuous service with an employer subject to this award.

**PROVIDED** that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this award.

### (b) Contributions

(i) An employer shall make a contribution in accordance with the requirements of the relevant Federal Legislation into the fund in respect of all eligible employees (as defined).

(ii) In the case of eligible casual and part-time employees, contributions shall become payable following the completion of 38 hours work each calendar month.

## **PART IV - ALLOWANCES**

### **1. MEAL MONEY**

- (a) An employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid \$12.70 meal money.
- (b) Any dispute as to what constitutes an adequate meal shall be referred to and decided by the Tasmanian Industrial Commission.
- (c) The payment prescribed in subclause (a) shall be made on the day on which the overtime is worked, prior to the meal break being taken.

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

### **1. HOURS**

- (a) The ordinary hours of duty shall not exceed 38 per week exclusive of meal hours and shall be worked between the hours of 8 am and 6 pm.



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- (b) Employees shall be allowed a meal period of not less than 45 minutes and not more than 60 minutes commencing between the hours of 11.00 am and 2.30 pm.

No employee shall work for more than five hours without a break of not less than 45 minutes for a meal.

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

- (c) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record make up time arrangements in the relevant time and wages book at each time this provision is used.

- (d) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

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- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record Rostered Days Off arrangements in the relevant time and wages book, at each time this provision is used.

## **2. OVERTIME**

- (a) For all time of duty outside of ordinary working hours the rates of pay shall be time and a half for the first three hours, and double time thereafter, and for the purpose of computation of overtime each day's work shall stand alone.
- (b) If the hours worked within the spread of hours in any day exceed eight, overtime at the appropriate rate shall be paid for all time in excess of 7 1/2 hours.
- (c) For all time of duty on Saturdays, Sundays and public holidays, payment shall be made at the rate of double time.
- (d) For the purpose of determining overtime entitlements of an employee, any employee who works ten minutes or more past the time fixed for ceasing work, shall be paid overtime rate for all time worked after the time fixed for ceasing work.

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

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

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

- (f) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

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(g) Casual Employees

Penalty rates prescribed in this Clause are applicable to casual employees. The 20 percent loading prescribed elsewhere in Part II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS Clause 1(b) shall be paid for all hours worked including times when penalty rates are applicable.

**PROVIDED** that all penalty additions shall be calculated on the ordinary time rate excluding this loading, viz. -

Time and one half equates to 1.7

Double time equates to 2.2.

(h) Requirement to work reasonable overtime

(i) Subject to clause (ii) an employer may require an employee to work reasonable overtime at overtime rates.

(ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- (1) any risk to employee health and safety;
- (2) the employee's personal circumstances including any family responsibilities;
- (3) the needs of the workplace or enterprise;
- (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (5) any other relevant matter.

### **3. REST PERIOD**

Employees who work for four hours or more on any day shall be granted one 10 minute rest period.

**PROVIDED** that no rest period shall apply on Saturday morning.

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

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

## **PART VI - LEAVE AND HOLIDAYS WITH PAY**

### **1. ANNUAL LEAVE**

(a) Period of Leave

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

(b) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Part VI – LEAVE AND HOLIDAYS WITH PAY Clause 4 - Holidays with Pay of this award, falls within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that leave one day for each such holiday so occurring.

(c) Payment in Lieu Prohibited

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

(d) Time of Taking Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period or, if the employer and employee agree, in one of the following methods:

- (i) in two separate periods, the lesser of which shall not be less than seven consecutive days, i.e. five working days;
- (ii) in any combination, provided that one period shall not be less than seven consecutive days, i.e. five working days.

(e) Payment for Period of Leave

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

(f) Leave Allowed Before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual

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leave shall not commence to accrue until after the expiration of the 12 months in respect of which annual leave had been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which leave was granted, the employer may for each complete month of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable to the employee upon the termination of the employment one-twelfth of the amount of wages paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed by Part VI – LEAVE AND HOLIDAYS WITH PAY Clause 4 - Holidays with Pay of this award.

(g) Proportionate Leave on Termination of Service

Where an employee terminates his employment, or his employment is terminated by the employer before the expiration of any twelve- monthly qualifying period, payment shall be made on the basis of four forty-eighths of a week's pay for each completed week of service. Calculation of this payment shall be made at the rate of average earnings for the preceding four weeks.

(h) Annual Leave Loading

In addition to other payments under this clause, each employee shall receive a payment equal to 17 1/2 percent as an annual leave loading for all annual leave taken and paid for.

## **2. BEREAVEMENT 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 or 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 furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

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### **3. CARER'S LEAVE**

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Part VI - LEAVE AND HOLIDAYS WITH PAY Clause 6 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

For the purposes of this clause part-time employees, shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlements per annum.

Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

Leave may be taken for part of a single day.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
- (1) a member of the employee's immediate family, or
  - (2) a member of the employee's household.

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

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

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- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

(c) Grievance Process

Any dispute or claim arising out of the Carer's Leave provisions of the award shall be dealt with in the following manner:

- (i) the matter shall first be discussed between the employee and the employee's immediate supervisor;
- (ii) if not settled the matter shall be discussed between the employee's workplace delegate or representative and the immediate supervisor and the relevant manager with the authority to approve leave;
- (iii) if not settled the employee may refer the matter to the relevant union official to enable discussions between the appropriate union representatives and management representatives to occur;
- (iv) if not settled the matter may be submitted to the Tasmanian Industrial Commission for determination.

#### **4. HOLIDAYS WITH PAY**

(a) Definitions

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

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

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New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (c) Payment for the holidays mentioned in subclause (b) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holiday, he or she had been at work.
- (d) Payment to an employee for work performed on holidays mentioned in subclause (b) of this clause shall be at the rates prescribed elsewhere in this award.

## **5. PARENTAL LEAVE**

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

- (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where **'child'** means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
  - (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or
  - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.



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- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
  - (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
  - (vii) **'Spouse'** includes a de facto or a former spouse.
- (b) Entitlement
- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
  - (ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
    - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
    - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
  - (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
    - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
  - (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

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- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special maternity leave
  - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
  - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
  - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.
- (vii) Transfer to a safe job
  - (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
  - (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

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(d) Paternity Leave

A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:

- (i) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
- (ii) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (iii) a statutory declaration stating:
  - (1) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (2) particulars of any period of maternity leave sought or taken by the mother, and
  - (3) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (iv) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
  - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

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- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
  - (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
  - (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
  - (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.
- (f) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

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(iii) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with this subclause, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.  
  
(B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(v) Transitional Arrangements - Sick Leave

An employee working part-time under this subclause 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.

(vi) Part-time Work Agreement

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

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(3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

(4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

(1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

(2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (vi).

(ix) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(x) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or

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(4) requiring consultation with, consent of or monitoring by a union;  
and such provisions do not apply to part-time work under this clause.

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and sick leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to former position after a period of parental leave or part time work

Unless other wise agreed between employee and employer, and consistent with the provisions of this clause

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c) (vii) clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

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

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

**6. SICK LEAVE**

(a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:

- (i) he/she shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
- (ii) he/she shall, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of his/her inability to attend for work and, as far as practicable, state the nature of the illness and the estimated duration of the absence;
- (iii) he/she shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

**PROVIDED** that two single day absences in each 12 month period shall be allowed without production of such proof;

- (iv) he/she shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;

**PROVIDED** that during the first three months of employment sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service.



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- (v) for the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in paragraph (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment.

## **PART VII - CONSULTATION AND DISPUTE RESOLUTION**

### **1. SETTLEMENT OF DISPUTES**

Any dispute that arises between the parties of this award, that cannot be settled by negotiation, shall be referred to the Tasmanian Industrial Commission, whose decision shall be final and binding.

## **PART VIII - CLOTHING**

### **1. CLOTHING**

Where the employer requests members of the staff to wear a uniform, the employer shall provide - at his expense - properly fitted uniforms.

Replacement shall also be at the employer's expense.

The employee shall be responsible for the cost of laundering and maintaining such uniforms.

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## **PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. STRUCTURAL EFFICIENCY AND AWARD MODERNISATION**

#### (a) Structural Efficiency

- (i) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry, and to enhance the career opportunities and job security of employees in the industry.
- (ii) At each plant or enterprise, an employer, the employees and their relevant union or unions may establish consultative mechanisms and procedures appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of paragraph (i) herein shall be processed through that consultative mechanism and procedures.
- (iii) Measures raised for consideration consistent with paragraph (ii) herein shall be related to implementation of the new classification structure, the facilitative provisions contained in this award and matters concerning training.
- (iv) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by agreement of the parties involved shall be implemented subject to the following requirements:
  - (1) The changes sought shall not affect provisions reflecting State standards.
  - (2) The majority of employees affected by the change at the plant or enterprise must genuinely agree to the change.
  - (3) No employee shall lose income as a result of the change.
  - (4) The relevant union or unions must be a party to the agreement.
  - (5) The relevant union or unions shall not unreasonably oppose any agreement.
  - (6) Any agreement shall be subject to approval by the Tasmanian Industrial Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency.
- (v) Any disputes arising in relation to the implementation of paragraphs (ii) and (iii) herein shall be subject to Part VII – CONSULTATION AND DISPUTE RESOLUTION Clause 1 - Settlement of Disputes of this award.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(b) Award Modernisation

- (i) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- (ii) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training and cooperation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputation.

**2. RIGHT OF ENTRY OF UNION OFFICIALS**

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

**3. STEWARDS**

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

P C Shelley  
**DEPUTY PRESIDENT**

3 August 2004