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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T12144 of 2005)
Private Sector Awards

Tasmanian Trades and Labor Council
(T12156 of 2005)
Private Sector Awards

Tasmanian Trades and Labor Council
(T12157 of 2005)
Private and Public Sector Awards

The Australian Workers' Union, Tasmania Branch
(T12163 of 2005)
Private Sector Awards

FULL BENCH:
PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case July 2005 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002005 – Safety Net Review – Award rates to be increased by $17 per week – Wage related allowances increased by 3% – Operative date ffpp 1 August 2005 – State Minimum Wage determined at $484.40 – s.35(1)(b)

MOBILE CRANE HIRE AWARD

ORDER BY CONSENT

No. 2 of 2005
(Consolidated)

CLAUSES 2, 4 AND 6 OF PART I – APPLICATION AND OPERATION OF THE AWARD, AND CLAUSES 1 AND 8 OF PART III – WAGES AND RELATED MATTERS 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 Mobile Crane Hire Award.

2. INDEX

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3. SCOPE

This award is established in respect of the industry of mobile crane hiring which means the hiring of:

- mobile cranes;
- mobile elevated work platforms and like equipment, and
- operating personnel.

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2005.

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5. AWARD INTEREST

(a) The following employee organisation has an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*:

the Construction, Forestry, Mining and Energy Union, Tasmanian Branch;

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

the Tasmanian Chamber of Commerce and Industry Limited.

(c) The following organisation is deemed to have an interest in this award pursuant to Section 63(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labour Council.

6. SUPERSESSION

This award incorporates and supersedes the Mobile Crane Hire Award No 1 of 2004 (Consolidated) and No. 1 of 2005.

PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. DEFINITIONS

The following definitions shall apply.

(a) **Dogger**

The dogger will carry out the work of slinging loads and will control the movement of such loads when handled by lifting appliances. It is also the dogger's responsibility to control loads when out of view of the crane operator. A dogger must hold the current certificates issued in accordance with statutory requirements.

(b) **Dogger/Rigger**

In addition to the work of a Dogger, the Rigger directly in charge of the initial work of setting up the crane will ensure all rigging work is carried out in a safe and efficient manner in accordance with statutory requirements.

A Rigger must hold the current certificates in accordance with statutory requirements.

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(c) **Mobile Crane**

A mobile crane is one having its own propulsion which includes tractor and crawler cranes.

(d) **Mobile Crane Hiring Industry**

Is a service industry involving the hiring of equipment and operating personnel as described in Clause 3 – Scope, of Part I of this award

Hiring can be on an hour by hour, day by day, or contract basis depending on the nature of the task.

(e) **Mobile Crane Operator**

The operator is the link between the operation of the mobile crane and its motive power and controls the apparatus inside the crane's cabin to regulate its movements ie. "luffing" (raising or lowering the jib or boom), "slewing" (turning the crane on its axis) or "hoisting" (raising or lowering) the hook.

It is the responsibility of the operator to ensure that the crane is set up, operated and maintained in a safe manner and to clearly understand that the crane is under the direction of the certified dogger/rigger who is responsible for the slinging and directing the movement of loads.

A crane operator must hold the current certificates in accordance with statutory requirements.

(f) **Mobile Elevated Work Platform (The Platform)**

Is a vehicle mounted unit with a telescoping device, hinged device, or articulated device or any combination of these used to support a platform on which personnel, equipment, or materials may be elevated to perform work.

(g) **Mobile Elevating Work Platform Operator**

Is an employee required to perform, alone or as part of a crew, tasks including:-

driving/relocating the platform between work locations;

setting up the platform; and

operating the platform in a safe and efficient manner.

A mobile elevating work platform operator must hold the current certificates in accordance with statutory requirements.

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2. EMPLOYEE'S DUTIES

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 deskilling and that any direction issued shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

3. EMPLOYMENT CATEGORIES

(a) Employment shall be either weekly or casual hire.

(b) Weekly Hire

Except as provided in subclause (c) an employee shall be engaged by the week.

(c) Casual Employment

(i) A casual employee is one engaged and paid in accordance with the provisions of this clause. A casual employee shall be entitled to all of the applicable rates and conditions of employment prescribed by this Award except annual leave, personal leave, parental leave, jury service, public holidays, notice of termination and redundancy.

(ii) An employer when engaging a person for casual employment must inform the employee in writing that the employee is to be employed as a casual, stating by whom the employee is employed, the job to be preformed, the classification level, the actual or likely number of hours to be worked, and the relevant rate of pay.

(iii) A casual employee for working ordinary time shall be paid 125 per cent of one thirty-eighth of the relevant Weekly Rate (i.e. the hourly rate), prescribed by Part III - WAGES AND RELATED MATTERS Clause 1, for the employee's classification.

(iv) A casual employee required to work overtime, or on a Saturday, or on a Sunday, or on a public holiday, shall be entitled to the relevant penalty rates prescribed by Part IV – HOURS OF WORK, SHIFTWORK AND OVERTIME Clause 3 provided that :

(1) where the relevant penalty is time and one half, the employee shall be paid 175 per cent of the hourly rate for the employee's classification; and

(2) where the relevant penalty rate is double time, the employee shall be paid 225 per cent of the hourly rate for the employee's classification; and

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(3) where the relevant penalty rate is double time and a half, the employee shall be paid 275 per cent of the hourly rate for the employee's classification."

4. TERMINATION OF EMPLOYMENT

(a) Notice of Termination of Employment

(i) Except as provided in paragraphs (iii) and (v) hereof, the employer shall give to the employee the following notice of termination:

Period of continuous service	Period of notice
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

(ii) In addition to the above notice employees over 45 years of age at the time of giving notice with not less than two years continuous service shall be entitled to an additional weeks notice.

(iii) Payment in lieu of notice shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(iv) In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated shall be used.

(v) The period of notice shall not apply in the case of dismissal for conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specific task or tasks.

(b) Notice of Termination By Employees

The notice of termination required to be given by an employee shall be a minimum of one week.

(c) Time Off During Notice Period

Where an employer has given notice of termination to an employee, the employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

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(d) Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(e) Summary Dismissal

The employer shall have the right to dismiss any employee without notice for conduct which justifies instant dismissal, including malingering, inefficiency or neglect of duty and in such cases the wages shall be paid up to the time of dismissal only.

(f) Abandonment of Employment

(i) The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer shall be prima facie evidence that the employee has abandoned employment.

(ii) Provided that if within a period of fourteen days from the employee's last attendance at work or at the date of the last absence in respect of which notification has been given or consent has been granted an employee has not established to the satisfaction of the employer that the absence was for a reasonable cause, the employee shall be deemed to have abandoned his or her employment.

(iii) Termination of employment by abandonment in accordance with this subclause shall operate as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the employer, whichever was the later.

5. LOSS OF VALIDATION OF LICENCES/CERTIFICATES

(a) Employees shall notify the employer in the event of cancellation or suspension of licences and/or certificates required in the performance of their duties.

(b) Should either a licence or certificate held by an employee be cancelled or suspended and the employee has notified the employer in accordance with subclause (a), all possible alternative employment options will be examined and where practicable provided by the employer.

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6. INTRODUCTION OF CHANGE

(a) Employer's Duty to Notify

(i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union.

(ii) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required and the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alternation of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs, but does not include matters the alteration of which is provided for by this award.

(b) Employer's Duty to Discuss Change

(i) The employer shall discuss with the employees affected and their union, inter alia, the introduction of the changes referred to in subclause (a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate and the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.

(ii) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (a) hereof.

(iii) For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees; provided that an employer shall not be required to disclose confidential information the disclosure of which would be contrary to the employer's interest.

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PART III - WAGES AND RELATED MATTERS

1. WAGE RATES

(a) Weekly Rates

Classification	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	$	$	$
(i) Mobile Cranes	453.80	161.00	614.80
Operator of mobile crane with a maximum lifting capacity of:			
up to 20 tonnes			
over 20 tonnes and up to 40 tonnes	459.80	161.00	620.80
over 40 tonnes and up to 80 tonnes	487.90	159.00	646.90
over 80 tonnes and up to 100 tonnes	505.50	159.00	664.50
Thereafter for each additional 20 tonnes lifting capacity: an additional $11.60 per week is applicable.			
Dogger	453.80	161.00	614.80
Dogger/Rigger	487.90	159.00	646.90
(ii) Operator – special purpose crane GCI(including mobile tower crane GCI 500 series)	487.90	159.00	646.90
(iii) Mobile elevated work platforms			
Trainee (undergoing training program in accordance with agreed national standards)	431.70	161.00	592.70
Boom length up to and including 11 metres (including trainee)	434.10	161.00	595.10
Boom length over 11 metres and up to 17 metres	453.80	161.00	614.80
Boom length over 17 metres and up to 23 metres	467.00	159.00	626.00
Boom length over 23 metres and up to 28 metres	482.40	159.00	641.40
Where boom length rating is in excess of 28 metres: an additional $1.09 per metre.			
Mobile hydraulic platform equipped with an under-bridge unit	482.40	159.00	641.40

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(b) The above weekly wage rates include an amount for an industry allowance:

Where more than one crane is engaged on any single lift the following additional payments shall be made:

(i) where two cranes are engaged the drivers thereof shall be paid at the rate of $2.45 per day for each day so occupied;

(ii) where three cranes are engaged the drivers thereof shall be paid at the rate of $4.80 per day for each day so occupied;

(iii) where four cranes are engaged the drivers thereof shall be paid at the rate of $7.25 per day for each day so occupied;

(iv) where more than four cranes are engaged the drivers shall be paid at the rate of $9.70 per day for each day so occupied.

(c) Pile Driving Allowance

An employee performing pile driving or extraction shall receive $11.90 per day or part thereof.

2. FARES, TRAVEL AND ACCOMMODATION

(a) Fares and Travel Allowance

(i) $13.80 per day (i.e., paid only once per day) shall be paid to compensate for travel patterns and costs peculiar to the nature of employment in the mobile crane hiring industry.

(ii) This allowance shall be payable for every day upon which an employee works or reports for work in accordance with the employer's requirements but shall not be taken into account in calculating overtime, penalty rates, annual leave, sick leave or RDOs.

(ii) It is recommended that for taxation purposes, employees maintain a private log book of travel times and expenditures.

(iv) An employee directed to a work site where there is no reasonable means of transport available on cessation of work shall upon request be supplied with transport by the employer to return to the Depot or point where work was commenced.

Provided that this provision shall apply only on the first day of engagement on any work site.

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(v) Provided that where alternative arrangements for the treatment of fares and travel existed as at 10th September 1990 such arrangements shall continue until further order of the Commission.

(b) Travel During Working Hours

(i) Car Allowance

An employee directed by an employer to use a private vehicle during working time shall be paid 0.75 cents per km measured to and from respective sites, in addition to payment for the time spent in travelling at the appropriate ordinary time or overtime rate.

(ii) Provided the time spent travelling from home to the initial work site and travelling from the final work site to home on any day shall not be paid unless the employee travels beyond a radius of 50km from the employer's depot. An employee travelling beyond the 50km radius on any day shall be paid travelling time at the appropriate rate for the time taken travelling to and from the site to the 50km radius line.

(c) Accommodation and Overnight Allowance

Where an employee is required by the employer to be away from home overnight, first class accommodation, including full board shall be provided by the employer. In addition $10.60 shall be paid for each night the employee is required to be away from home.

3. MIXED FUNCTIONS

Where an employee on any day performs work in a classification attracting a higher rate of pay, such higher rate of pay shall apply for the whole day.

4. SUPERANNUATION

(a) Definitions

For the purposes of this clause -

(i) **'Superannuation legislation'** means the Federal legislation, as varied from time to time, governing the Superannuation rights and obligations of the parties, which includes the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*.

(ii) **'Fund'** means a complying fund, as defined in the Superannuation legislation.

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(iii) **'Eligible employee'** shall mean an employee who is entitled to receive employer superannuation contributions in accordance with the Superannuation legislation

(iv) **'The relevant fund'** means the C+BUS Scheme.

(b) (i) Employers shall contribute an amount on behalf of each eligible employee into a relevant superannuation fund, which reflects the employers' liability as prescribed in Part 3 of the of the *Superannuation Guarantee (Administration) Act 1992* (as set out in paragraph (ii) below), or any higher amount as required by the Trust Deed of the relevant fund.

(ii) The level of contributions required under the *Superannuation Guarantee (Administration) Act 1992* are (subject to any variation to that Act) as follows:

Financial Year (1 July - 30 June)	Percentage
2000-01	8
2001-02	8
2002-03 and subsequent years	9

(c) This clause shall not apply to persons holding an exemption granted by the trustees of the relevant fund.

5. ACCIDENT PAY

(a) Entitlement

(i) An employee's entitlement to accident make up pay for a work related injury shall be subject to the employee suffering an injury for which weekly compensation payments are payable pursuant to the relevant Workers' Compensation legislation.

(ii) An employer shall pay accident make up payment during the incapacity of the employee, within the meaning of the relevant legislation.

(iii) The liability of the employer under this Clause shall arise at the date of the injury in respect to which compensation is payable under the relevant legislation and shall continue whilst the employer is liable to pay compensation up to an aggregate maximum of 52 weeks payment for any one injury.

(iv) (1) Accident pay shall only be payable to an employee whilst in the employment of the employer by whom the employee was employed at the time of the incapacity.

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(2) Provided that in the case of termination of an employee who is incapacitated and receiving accident make up pay, such payment shall continue to apply except where:-

(A) the termination is due to serious and/or wilful misconduct; or

(B) arises from a declaration of liquidation/insolvency of the employer in which case the employee's entitlement shall be considered by the parties to the award.

(3) To qualify for the continuation of accident make-up pay on termination, an employee shall if required provide evidence to the employer of the continuation of weekly compensation payments.

(v) Accident make up pay shall not apply in respect of any injury during the first five ordinary working days of incapacity.

(vi) Accident make up pay shall not apply to any incapacity occurring during the first three weeks of employment unless such incapacity extends beyond the first three weeks and then, subject to the above, accident make up pay shall apply only to the period of incapacity after the first three weeks. Provided that industrial diseases contracted by gradual process or injuries subject to recurrence, aggravations or accelerations shall not be subject to accident make up pay unless the employee has been employed at the time of the incapacity for a minimum period of one month.

(vii) An employee on engagement may be required to declare all workers compensation claims made in the previous five years. In the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit the entitlement to accident make up pay provided by this Clause.

(b) Absences on Other Paid Leave

An employee shall not be entitled to accident pay in respect of any period of other paid leave.

(c) Notice of Injury

Upon receiving an injury for which an employee claims to be entitled to receive accident pay, such employee shall give notice in writing of the said injury to the employer as soon as reasonably practicable after the occurrence; provided that such notice may be given by a representative of the employee.

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(d) Medical Examination

In order to receive entitlement to accident pay, an employee shall conform to the requirements of the relevant legislation as to medical examination. Where, in accordance with the relevant legislation, a medical referee gives a certificate as to the condition of the employee and the employee's fitness for work, or specifies work for which the employee is fit, and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

(e) Redemption of Weekly Payments

Where there is a redemption of weekly compensation payments under the relevant legislation, the employer's liability to pay accident pay shall cease as from the date of such redemption.

(f) Civil Damages Claim

(i) An employee receiving or who has received accident pay shall advise the employer of any action the employee may institute or any claim the employee may make for damages. Further, the employee shall, if requested, provided an authority to the employer entitling the employer to a charge upon any money payable pursuant to any verdict of settlement on that injury.

(ii) Where an employee obtains a verdict for damages in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer, the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

(iii) Where an employee obtains a verdict for damages against a person other than the employer in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer, the employee shall pay to the employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

(g) Insurance Against Liability

Nothing in this award shall require an employer to insure against liability for accident pay.

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(h) Variations in Compensation Rates

Any changes in compensation rates under the relevant legislation shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

(i) Death of Employee

All rights to accident pay shall cease on the death of an employee.

(j) Committee to Review

In the event of any dispute arising as to the entitlement of an employee to payment of accident pay, the matter shall either:

(i) be dealt with by Clause 1 - Settlement of disputes of Part VI – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION; or

(ii) if the parties to this award agree, be referred to a Committee of Review, which shall comprise two representatives of employers and two representatives of employees together with a chairperson mutually agreed upon or as appointed by the President of the Commission. The decision of the Committee shall be final and accepted by all parties.

(k) Definitions

(i) **'Accident Make Up Payment'** means a weekly payment being the difference between the weekly compensation paid to the employee pursuant to the relevant Workers' Compensation legislation and the wages the employee would have received for ordinary hours worked if the employee had been performing normal duties. This shall exclude additional payments such as attendance, bonus payments, shift penalties, overtime payments, fares and travelling allowance, site allowance, or other such rates.

(ii) **'Part of a Week Payment of Accident Make Up'** shall mean a direct pro-rata of one week's ordinary earnings.

(iii) **'Injury'** shall be given the same meaning and application as applying under the relevant Workers' Compensation legislation and no injury shall result in the application of make up pay unless an entitlement exists under such legislation.

(iv) **'Relevant Workers' Compensation legislation'** and **'relevant legislation'** shall mean the *Workers Rehabilitation and Compensation Act 1988*, as amended.

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6. PAYMENT OF WAGES

(a) Wages shall be paid in cash either weekly or fortnightly. Provided that an employer with the consent of the employee may elect to pay wages by cheque or direct transfer into the employee's bank (or other recognised financial institution) account. Should the employer and employee so elect, the employer shall pay for establishment cost only of the account. Maintenance costs of the account shall be the employee's responsibility.

(b) Wages to be Paid During Working Hours

Wages shall be paid during ordinary working hours and an employee kept waiting for wages on pay day after the usual time for ceasing work, shall be paid at overtime rates for the period kept waiting.

(c) Day Off Coinciding With Pay Day

In the event that an employee, by virtue of the arrangement of ordinary working hours, is to take a day off on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.

Provided that where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(d) Termination of Employment

Upon termination of employment, wages due shall be paid on the day of such termination or forwarded by electronic transfer or post on the next working day.

(e) Details of Payments to be Given

On or prior to pay day, the employer shall state to the employee in writing the amount of wages due, the amount of deductions, and the net amount paid.

(f) Casual Employees

Where a casual employee is engaged for a work period which includes the designated pay day, wages will be paid in accordance with such arrangements. This shall not affect the employee's status as a casual. If a casual is engaged on a daily basis, then the payment shall be made on a daily basis unless otherwise mutually agreed.

7. INCLEMENT WEATHER

(a) Employees shall not be entitled to payment for time lost due to inclement weather unless work has ceased by agreement with the employer; provided that employees shall not be required to work in unsafe conditions.

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(b) Subject to subclause (a), employees unable to work at a site due to inclement weather may be required to:

- remain on site; or
- transfer the crane to an alternative site; or
- return to the depot;

until such inclement weather ceases or abates to allow safe work to continue.

Where cranes are left on site for five (5) working days or more and employees are deemed to be part of the site, the procedures on the site ("site procedures") shall apply. A crane shall not be removed from a site if it is unsafe to do so as a result of weather conditions

(c) **'Site Procedures'** shall only relate to this Inclement Weather Clause.

(d) Definitions

(i) **'Inclement Weather'** shall mean the existence of abnormal climatic conditions (i.e. rain, hail, snow, high winds, cold, extreme high temperature or the like or any combination thereof) by virtue of which it is not reasonable or safe to continue working whilst the same prevail.

(ii) **'Employer'** shall mean owner, manager or recognised agent of the owner or manager of the Company.

8. 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 the Supported Wage System is $448.40 per week.

(ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)

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(iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

(ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i)

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(i) applies to all work in ordinary hours;

(ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and

(iii) is inclusive of the arbitrated safety net adjustment provided by the July 2005 State Wage Case Decision (T12144 of 2005) and all previous safety net and state wage case adjustments.

PART IV - HOURS OF WORK, SHIFTWORK AND OVERTIME

1. HOURS OF WORK

(a) The ordinary hours of work shall be 38 per week, Monday to Friday, worked continuously at the discretion of the employer, between 6.00am and 6.00pm except for meal breaks.

(b) The method of working the 38-hour week may be any one of the following:

(i) by employees working less than eight ordinary hours each day; or

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(ii) by employees working less than eight ordinary hours on one or more days each week; or

(iii) by fixing one week day on which all employees will be off during a particular work cycle; or

(iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

(c) A regular starting and finishing time shall be fixed at each depot, which shall not be changed, except after notice of at least a week. Provided that an employee's starting time for a particular day may be altered to suit the business requirements of the employer by mutual agreement with the employee/s concerned.

(d) The ordinary hours of work prescribed herein shall not exceed ten hours on any day; provided that any arrangement of ordinary working hours in excess of eight hours in any one day shall be with the agreement of the majority of employees involved.

(e) An assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned. In the absence of agreement the Settlement of Disputes Clause shall be applied.

(f) Circumstances may arise where different methods of implementation of a 38-hour week apply to various groups or sections of employees in the establishment concerned.

(g) Providing for Rostered Days Off

(i) Where the hours of work are arranged in accordance with paragraphs (b)(iii) or (b)(iv), the ordinary working hours shall be worked in a twenty (20) day cycle, Monday to Friday inclusive, with eight (8) hours worked for each of nineteen (19) days and with 0.4 of an hour on each of those days accruing toward the twentieth (20th) day which shall be taken as a paid day off and known as the Rostered Day Off.

(ii) An employee shall be entitled to 13 Rostered Days Off per year, provided that the number of Rostered Days Off shall be reduced to the extent of any annual leave taken on the basis of one day for each four weeks of annual leave taken.

(iii) By mutual agreement between the employer and employees, Rostered Days Off may be accumulated to a maximum of five (5) days over a twenty (20) week period. Accumulated Rostered Days Off must be taken no later than the fourteen (14) day period commencing at the time of the fifth (5th) accumulated Rostered Day Off of the twenty (20) week cycle.

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(iv) Rosters shall be fixed by mutual agreement in advance for the ensuing twelve (12) months. An employer, with the agreement of the Union, may substitute another day as the Rostered Day Off, provided arrangements regarding the substitute day are made at least seven (7) days prior to the listed day.

(v) (1) Employee(s) who agree to work on the Rostered Day Off to satisfy the employer's business requirements shall take an alternative Rostered Day Off on a mutually convenient day prior to the next rostered day off. Where agreement cannot be reached it shall be taken in conjunction with the next rostered day off.

(2) Except in the case of an emergency circumstance no employee shall be required to work on a rostered day off. Where an emergency circumstance does occur the employee shall be paid an additional days pay at ordinary rates for that week (that is 45 hours and 36 minutes pay for that week at the ordinary rate instead of 38 hours pay) in addition to being given a substitute rostered day off. An emergency shall mean where less than 24 hours notice of the requirement to work on the rostered day off has been given.

(vi) In the case of termination an employee who has not worked a completed nineteen (19) day four (4) week cycle shall receive pro rata accrued entitlements for each day worked in such cycle.

(vii) Any dispute arising as a result of the implementation of rostered days off shall be progressed in accordance with Clause 1 of Part VI - Settlement of Disputes.

2. MEAL BREAKS

(a) Meal Interval

(i) A set meal interval shall be established in each depot by mutual agreement between the employer and employees which may be altered by the employer by giving one weeks notice. An employee shall cease work for a meal interval of thirty (30) minutes on all working days, except Saturday and Sunday, between the hours of 11:30am and 1:00pm, inclusive.

(ii) An employee may be required to change the meal break to suit the requirements of the employer or client, provided that an employee who has not completed the meal break after six (6) hours from the normal starting time on any day to suit the requirements of the employer or the client shall be paid at the appropriate penalty rates thereafter until a meal break is allowed.

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(b) Meal Interval During Overtime

(i) (1) If the period of overtime is more than 1½ hours after working ordinary hours an employee before starting such overtime shall be allowed a meal break of twenty minutes, which shall be paid for at ordinary time.

(2) If agreement is reached between the employer and employee for variation of this provision to meet the circumstances of work in hand, then the employer shall not be required to make payment in excess of twenty minutes.

(ii) An employee working overtime shall be allowed a meal break of twenty minutes for each four hours of overtime worked provided that the employee continues to work after such meal break.

(iii) An employee required to work overtime for more than 1½ hours after working ordinary hours shall either be supplied meals by the employer, or be paid $10.20 for the first and subsequent meals.

(iv) (1) An employee required to start work two or more hours prior to the normal commencement time shall be paid $10.20 meal allowance and be allowed a twenty minute meal break as soon as is practicable.

(2) Such allowance shall be payable in any event where an employee is required to start work at or prior to 5.00am.

(v) Where an employee is required to work overtime on a Saturday or Sunday the first prescribed meal break shall be between 10.00am and 1.00pm and be paid at ordinary rates.

3. OVERTIME

(a) An employee may be required to work reasonable overtime and such overtime need not be limited to one job only. An employee may be notified to work such overtime prior to leaving the employer's premises or where the employee agrees, after having left the employer's premises.

(b) (i) All time worked on weekdays outside the ordinary hours and on Saturdays, shall be paid at time and one half for the first two hours and double time thereafter. Provided that overtime worked after 12 noon on Saturday shall be paid at double time.

(ii) All time worked on a Sunday shall be paid at double time.

(iii) All time worked on a public holiday shall be paid at double time and one half.

(c) An employee shall be paid a minimum of four hours at the appropriate penalty rates for working overtime on a Saturday, Sunday or Public Holiday.

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(d) An employee travelling between the depot and nominated work site outside of ordinary hours shall be paid at the appropriate overtime rates for the period of such travel.

(e) An employee travelling to and/or from home to start/finish overtime when reasonable means of transport are not available shall either be provided with transport to and/or from home or be paid ordinary rates for the time taken for such travel.

(f) When overtime work is necessary, it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days or shifts.

(g) (i) An employee who works so much overtime:-

- between the finish of ordinary work on any day or shift and the commencement of ordinary work on the next day or shift, that the employee has not had at least ten consecutive hours off duty between these times; or

- on Saturdays, Sundays and holidays, not being ordinary working days, or on a rostered day off, without having had ten consecutive hours off duty in the twenty-four hours preceding the employees ordinary commencing time on the next ordinary day or shift

shall, subject to this sub-clause, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(ii) If on the instruction of the employer such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double rates until released from duty for such a period and shall then be entitled to be absent until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(h) Call Back

(i) An employee recalled to work after leaving the employer's premises shall be paid a minimum of four hours at the appropriate penalty rates. The employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period.

(ii) An employee directed to be on standby either at home, place of work or elsewhere, to work prior to or after ordinary hours, or on a Saturday, or on a Sunday or public holiday, shall be paid standby time at the ordinary rate for the period from which the employee is directed to standby and until released by the employer.

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(iii) Where such overtime goes beyond midnight or commences between midnight and 2.00am, a minimum of eight hours at the appropriate rate shall be paid.

4. SHIFT WORK

(a) An employee may be required to work shift work.

(b) Except as provided for in subclause (c), shift workers shall be paid 15% more than the ordinary rate for such shifts.

(c) (i) Shift workers who work on any afternoon or night shift roster which does not continue for at least five (5) successive afternoons or nights, shall be paid for each shift 50% for the first two (2) hours thereof, and 100% for the remaining hours thereof, in addition to the ordinary rate.

(ii) Where on a site at which the employee is engaged the shift premiums for the majority of employees are higher than those provided in subclause (b), such employee shall receive the higher shift premiums.

(iii) Where an employee is engaged in shift work on a site where employees receive compensation by way of annual leave and annual leave loading or otherwise for working Saturday, holiday and/or Sunday shifts, such employee shall be given similar compensation for working such shifts.

(d) All time worked on Saturdays shall be paid at overtime rates.

(e) All time worked on Sundays shall be paid at the rate of double time.

(f) All time worked on holidays shall be paid at the rate of double time and one half.

(g) All work outside the ordinary hours of shift work shall be paid at the rate of double time.

(h) A dayworker required to work shift work shall receive one (1) week's notice or payment of penalty rates.

(i) Definitions:

(i) **'Day Shift'** means any shift starting at, or after 6:00am and before 10:00am.

(ii) **'Afternoon Shift'** means any shift starting at, or after 10:00am and before 8:00pm.

(iii) **'Night Shift'** means any shift starting at, or after 8:00pm and before 6:00am.

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PART V - LEAVE AND HOLIDAYS WITH PAY

1. PUBLIC HOLIDAYS

(a) An employee, other than a casual employee (as defined) shall be entitled to the following holidays without deduction of ordinary pay:

(i) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day, Australia Day, Anzac Day, Queen's Birthday and Eight Hours Day and;

(ii) Regatta Day in the south of the State (i.e., Oatlands and all towns south of Oatlands), and Recreation Day in the north of the State (i.e., all towns north of Oatlands); and

(iii) Show Day in the locality as proclaimed or gazetted by the authority of the State government.

(b) (i) When Christmas Day falls on a Saturday or Sunday, a holiday in lieu thereof shall be observed on 27 December.

(ii) When Boxing Day falls on a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

(iii) When New Year's Day or Australia Day fall on a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

(c) Where public holidays are declared or prescribed on days other than those set out in subclause (a), those days shall constitute additional holidays for the purpose of this award.

(d) (i) An employer and his/her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

(ii) Such agreement shall be recorded in writing and be available to every affected employee.

(iii) The union party to this award shall be informed of such agreement and may within seven days refuse to accept it. The union will not unreasonably refuse to accept the agreement.

(iv) If the union refuses to accept the agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the union.

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(v) If no resolution is achieved, the employer may apply to the Commission for approval of the agreement reached with his/her employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and employee representative an opportunity to be heard, the Commission will determine the application.

(e) Where an employee is absent from his/her employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday.

(f) (i) An employer who terminates the employment of an employee except for reasons of misconduct or incompetence (proof of which shall lie upon the employer) shall pay the employee a day's ordinary wages for each holiday prescribed in subclauses (a), (b) and (c) or each holiday in a group as prescribed in paragraph (f)(ii) which falls within 10 consecutive calendar days after the day of termination.

(ii) Where any two or more of the holidays prescribed in this award occur within a 7 day span, such holidays shall for the purpose of this award be a group of holidays. If the first day of the group of holidays falls within 10 consecutive days after termination, the whole group shall be deemed to fall within the 10 consecutive days.

(iii) Christmas Day, Boxing Day and New Year's Day shall be regarded as a group.

(iv) No employee shall be entitled to receive payment from more than one employer in respect of the same public holiday or group of holidays.

(g) Where an employee is working on a part-time basis pursuant to the provisions of Clause 6 of Part V - Parental Leave, the holidays provisions in this clause shall only apply in respect of that part of a holiday or group of holidays which coincides with the ordinary hours of part-time work applicable to that employee.

2. ANNUAL LEAVE

(a) (i) A period of twenty-eight (28) consecutive days, including weekends, but exclusive of any public holidays occurring during the period, shall be given and taken as leave annually to all employees, other than casual employees, after twelve (12) months continuous service with an employer.

(ii) Leave shall be given and shall be taken within six (6) months from the date when the right to annual leave occurred and after not less than four (4) weeks notice to the employee.

(b) An employee on weekly hiring shall accrue annual leave at the rate of 2.923 hours for each thirty-eight (38) ordinary working hours worked.

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(c) Broken Leave

(i) The annual leave shall be given and taken in one or two continuous periods. If given in two (2) separate periods, then one of those two (2) periods must be at least twenty-one (21) consecutive days, including non-working days.

(ii) If the employer and an employee so agree, an annual leave entitlement may be given, and taken in two (2) separate periods, neither of which is of at least twenty-one (21) consecutive days, including non-working days, or on three (3) separate periods.

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

(e) Leave Allowed Before Due Date

(i) An employer may allow an employee to take annual leave prior to the employee's right thereto. In such circumstances, the qualifying period of further annual leave shall not commence until the expiration of twelve (12) months in respect of which the leave so allowed was taken.

(ii) Where an employer has allowed an employee to take annual leave pursuant to paragraph (i) and the employee's services are terminated (by whatsoever cause) before the right thereto has accrued, the employer shall be entitled to deduct from any remuneration payable any excess due on account of such annual leave payments.

(f) Calculation of Continuous Service

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

- Any interruption or termination of the employment by the employer, if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect to leave of absence.
- Personal sickness or accident.
- Leave lawfully granted by the employer.
- Jury service.

(ii) In cases of any absence from work by reason not specified in this Clause, the employee, to be entitled to the benefit of this sub-clause, shall inform the employer, in writing if practicable, within twenty-four (24) hours of the commencement of such absence, of the employee’s inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the

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estimated duration of the absence. A notification given by an employee, pursuant to Clause 3 - Sick Leave of Part V – LEAVE AND HOLIDAYS WITH PAY shall be accepted as notification under this sub-clause.

(iii) Any absence from work by reason of any cause not being a cause specified in this sub-clause, shall not be deemed to break the continuity of service for the purposes of this Clause, unless the employer, during the absence, or within fourteen (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 depot, in the manner in which general notifications to employees are usually made in that depot, and by posting to each union whose members have participated in such concerted or collective absenteeism, a copy of it not later than the day it is posted up in the depot.

(g) Payment for Period of Annual Leave

Each employee, before going on leave, shall be paid the wages the employee would have received in respect to the ordinary time the employee would have worked had the employee not been on leave during the relevant period, provided that payment for the period specified in sub-clause (b) of this Clause shall not exceed 152 ordinary hours. Subject to sub-clause (i), each employee shall, where applicable, have the amount of wages to be received for annual leave, calculated by including the following:

(i) The rate applicable as prescribed by Clause 1 of Part III - WAGES AND RELATED MATTERS.

(ii) The rate payable pursuant to Clause 3 - Mixed Functions of Part III – WAGES AND RELATED MATTERS, calculated on a daily basis which the employee would have received for ordinary time during the relevant period.

(iii) Any other rate to which the employee is entitled in accordance with the contract of employment for ordinary hours of work, provided that this provision shall not operate so as to include any payment which is of a similar nature to, or is paid for the same reasons as, or is paid in lieu of, those prescribed by Clause 3 - Overtime of Part IV – HOURS OF WORK, SHIFTWORK AND OVERTIME, and Clause 2 - Fares, Travel and Accommodation of Part III – WAGES AND RELATED MATTERS nor any payment which might have become payable to the employee as reimbursement for expenses incurred.

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(h) Loading on Annual Leave

(i) During a period of Annual Leave, an employee shall receive a loading of 17½% calculated on the relevant weekly wage rate. Provided that where the employee would have received shift loadings prescribed by Clause 4 – Shift Work of Part IV – HOURS OF WORK, SHIFTWORK AND OVERTIME had the employee not been on leave, and such loadings would have been of a greater amount than 17½%, then the shift loadings shall apply to the relevant weekly wage rate in lieu of 17½%.

(ii) Loading on Termination

The loading prescribed above shall also apply to proportionate leave on lawful termination.

(i) Proportionate Leave on Termination

An employee on weekly hiring who after one week's continuous service in the first qualifying twelve (12) monthly period with an employer leaves the employment of the employer, or whose employment is terminated by the employer through no fault of the employee, shall be paid 2.923 hours for each 38 ordinary hours worked.

(j) Annual Close Down

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

(i) The employer may, by giving not less than 4 weeks notice, stand off for the duration of the close down all employees in the depot or section concerned, and allow to those who are not then qualified for full entitlement to annual leave for 12 months continuous service, paid leave on a proportionate basis at the appropriate rate of wage as prescribed by this clause for 2.923 hours for each 38 ordinary hours worked.

(ii) An employee who has qualified for a full entitlement to annual leave for 12 months continuous service, and has completed a further week or more of continuous service shall be allowed leave and shall be paid at the appropriate rate of wage for 2.923 hours for each 38 ordinary hours worked since the close of the employee’s last 12 monthly qualifying period.

(iii) The next 12 monthly qualifying period for each employee affected by such close down shall commence from the day on which the depot, or section concerned is re-opened for work. Provided that all time during which an employee is stood off without pay for the purposes of this sub-clause shall be deemed to be time of service in the next 12 monthly qualifying period.

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(iv) If in the first year of service with an employer an employee is allowed proportionate annual leave, and subsequently within such year leaves the employment or the employment is terminated by the employer through no fault of the employee, the employee shall be entitled to the benefit of paragraph (j)(i) subject to adjustment for any proportionate leave which the employee may have been allowed as aforesaid.

(v) (1) An employer may close down the depot for one or two separate periods for the purpose of granting annual leave in accordance with this sub-clause. If the employer closes down the depot in two separate periods one of those periods shall be for a period of at least 21 consecutive days including non-working days.

(2) Provided that where the majority of the employees in the depot or section concerned agrees, the employer may close down the depot in accordance with this sub-clause in two separate periods neither of which is of at least 21 consecutive days including non-working days, or in three separate periods. In such cases the employer shall advise the employees concerned of the proposed dates of each close down before asking them for their agreement.

(k) Part Close Down and Part Rostered Leave

(i) An employer may close down the depot, or a section thereof for a period of at least 21 consecutive days including non-working days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.

(ii) An employer may close down the depot, or a section thereof for a period of less than 21 consecutive days including non-working days and allow the balance of the annual leave due to an employee in one or two continuous periods either of which may be in accordance with a roster. In such a case the granting and taking of annual leave shall be subject to the agreement of the employer and the majority of employees in the depot or a section thereof, and before asking the employees concerned for their agreement the employer shall advise them of the proposed date of the close down or close downs and the details of the annual leave roster.

3. SICK LEAVE

(a) A weekly hire employee who is absent from work on account of personal illness, or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to:-

(i) The employee shall not be entitled to paid leave of absence for any period for which there is an entitlement to workers' compensation.

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(ii) The employee shall as far as practicable prior to the first day of absence, and in any event within 24 hours of the commencement of such absence, inform the employer of the inability to attend for duty and, as far as practicable, state the nature of the injury or illness, and the estimated duration of the absence.

(iii) Other than for two single days each year, proof to the satisfaction of the employer shall, if required, be supplied by the employee. Proof shall be in the form of a certificate from a medical practitioner or, where acceptable to the employer, a statutory declaration.

(iv) An employee shall be entitled to ten days sick pay per year. Provided that in the first year of employment sick leave shall accrue at the rate of one day at the beginning of each of the first ten calendar months of employment.

(v) If the employer terminates and then re-engages an employee within a period of six months then any unclaimed balance of the employee's sick leave shall continue from the date of re-engagement.

(b) Any period of sick leave not taken by an employee in any year shall be cumulative and may be taken in subsequent years.

4. BEREAVEMENT LEAVE

A weekly hire employee shall be entitled to a maximum of three days leave without deduction of pay:

(a) On each occasion of the death within Australia of the employee's husband, wife, de facto husband, de facto wife, father, mother, brother, sister or child, grandparents, grandchildren, mother-in-law or father-in-law;

(b) On each occasion the employee travels overseas in connection with the death outside Australia of one of the relatives specified in subclause (a).

5. JURY SERVICE

(a) A weekly hire employee required to attend for jury service during ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of attendance for such jury service and the amount of wages which would have been received in respect of the ordinary time (including fares and travel) which would have been worked had the employee not been on jury service.

(b) An employee shall notify the employer as soon as possible of the date upon which attendance for jury service is required. Further, the employee shall provide to the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

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6. 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

(i) For the purpose of this clause **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 spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

(ii) Subject to (a)(iii) hereof **spouse** includes a de facto or a former spouse.

(iii) In relation to subclause (e) hereof **spouse** includes a de facto spouse but does not include a former spouse.

(b) Basic 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 females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(ii) Subject to (c)(vi) hereof, parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances:

(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 the placement of the child.

(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 ten weeks;

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(2) of the date on which the employee proposes to commence maternity leave, and the period of leave to be taken - at least four weeks.

(ii) When the employee gives notice under (c)(i)(A) hereof 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 the employee will not engage in any conduct inconsistent with her contract of employment.

(iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

(iv) Subject to (b)(i) hereof and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the 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 the employee 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 the employee is entitled in lieu of, or in addition to, special maternity leave.

(3) Where an employee not then on maternity leave suffers an illness related to the pregnancy, the employee may take any paid sick leave to which the employee 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 parental leave taken by a spouse, may not exceed 52 weeks.

(vii) Where leave is granted under (c)(iv) hereof, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

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(d) Paternity leave

(i) An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave:

(1) a certificate from a registered medical practitioner which names the employee's spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

(2) written notification of the dates on which the employee proposes to start and finish the period of paternity leave; and

(3) a statutory declaration stating:

- the employee will take that period of paternity leave to become the primary care-giver of a child;
- particulars of any period of maternity leave sought or taken by his spouse; and
- that for the period of paternity leave the employee will not engage in any conduct inconsistent with his contract of employment.

(ii) The employee will not be in breach of (d)(i) hereof 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 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) 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 clause 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 a spouse, or other compelling circumstances.

(vi) An employee seeking to adopt a child is entitled to take 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) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change is to be notified at least four weeks prior to the commencement of the changed arrangements.

(g) 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, which they have accrued, subject to the total amount of leave not exceeding 52 weeks.

(h) Transfer to a safe job

(i) 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.

(ii) 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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(i) Returning to work after a period of parental leave

(i) An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (h) hereof, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) 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.

(j) Replacement employees

(i) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(iii) Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(k) Part-time work

(i) With the agreement of the employer:

(1) 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.

(2) A female employee may work part-time in one or more periods while the employee is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(3) 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.

(4) 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.

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(ii) Return to former position

(1) An employee who has had at least twelve 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 the employees former position.

(2) Nothing in (k)(ii)(1) hereof shall prevent the employer from permitting the employee to return to their former position after a second or subsequent period of part-time employment.

(iii) 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.

(iv) Pro rata entitlements

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

(v) Transitional arrangements - annual leave

(1) An employee working part-time under this subclause 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 subclause.

(2) 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 subclause, in such periods and manner as specified in the 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.

(3) 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.

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(vi) 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 entitlement 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.

(vii) Part-time work agreement

(1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:

- that the employee may work part-time;
- upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- upon the classification applying to the work to be performed; and
- upon the period of part-time employment.

(2) The terms of this agreement may be varied by consent.

(3) The terms of this agreement or any variation to it shall be reduced in 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.

(viii) 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.

(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.

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(ix) 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 (k)(v) hereof.

(x) Nature of part-time work

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

(xi) Replacement employees

(1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.

(2) A replacement employee may be employed part-time. Subject to this paragraph, (k)(v), (k)(vi), (k)(vii), (k)(ix) and (k)(xi) hereof apply to the part-time employment of replacement employee.

(3) 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.

(4) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of (k)(xi)(5) hereof.

(5) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

7. FAMILY LEAVE

(a) Carer's Leave

(i) The carer's leave entitlement shall include current sick leave and bereavement leave entitlements.

(ii) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, up to five days per annum of their carer's leave entitlement to provide care and support for such persons when they are ill.

(iii) The employee shall, if required, establish 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.

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(iv) In normal circumstances an employee shall not take carer's leave under this clause where another person has taken leave to care for the same person.

(v) Carer's leave may be taken for part of a single day.

(vi) The entitlement to use sick leave in accordance with this subclause is subject to:

(1) the employee being responsible for the care of the person concerned; and

(2) the person concerned being either:

(A) a member of the employee's immediate family; or

(B) a member of the employee's household.

(3) the term immediate family includes:

(A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; and

(B) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(vii) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reason for taking such leave and the estimated length of absence. If it is not practicable for the employee 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.

(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) Annual leave

(i) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

(ii) Access to annual leave, as prescribed in paragraph (c)(i), shall be exclusive of any shutdown period provided for elsewhere under this award.

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(iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(d) Time off in lieu of payment for overtime

(i) Subject to a majority of employees at a workplace agreeing to introduce this provision (in which case the union and any appropriate employer organisation will be provided with a courtesy copy in writing) an employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.

(ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.

(iii) An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in this award, for any overtime worked under paragraph (d)(i) where such time has not been taken within four weeks of accrual.

(e) Make-up time

(i) Subject to a majority of employees at a workplace agreeing to introduce this provision (in which case the union and any appropriate employer organisation will be provided with a courtesy copy in writing) an employee, other than an employee on shift work, may elect, with the consent of the employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

(ii) Subject to a majority of employees at a workplace agreeing to introduce this provision (in which case the union and any appropriate employer organisation will be provided with a courtesy copy in writing) 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.

(f) Grievance process

In the event of any dispute arising in connection with any part of this clause, such dispute will be dealt with in accordance with Clause 1 - Settlement of Disputes of Part VI – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

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PART VI - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

1. SETTLEMENT OF DISPUTES

The following procedure will be observed:

(a) Where a dispute, grievance or other question arises, the employee(s) concerned shall raise the matter with the Supervisor or other nominated representative of the employer. At the employee's option, the delegate may also be present.

(b) If not satisfactorily settled, or in cases where the matter is of such a nature as to warrant the omission of the step detailed in subclause (a) hereof, the delegate and the employee(s) concerned shall discuss the matter with the nominated representative of the employer.

(c) If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

(d) Throughout the foregoing procedure, normal work shall continue. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

(e) This procedure shall be followed in good faith and without unreasonable delay by any party.

(f) This procedure shall not apply in the event of any genuine issue involving safety.

(g) At any stage of this procedure, either party may refer the matter to the Industrial Commission for determination.

PART VII – OCCUPATIONAL HEALTH AND SAFETY, TOOLS AND AMENITIES

1. AMENITIES

(a) At each depot amenities such as drinking water, boiling water, meal facilities, showers, sanitary conveniences etc. shall be in accordance with Statutory requirements.

An employer shall provide a suitable locker for each employee.

(b) First Aid Kit

At each workplace a first aid kit in accordance with statutory requirements shall be supplied and be accessible to all employees. Provided that a basic first aid kit shall be located in each crane.

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(c) Street Directories

The employer shall provide for the use of each crane driver current street directories of the areas in which the employee works.

(d) Airconditioner

Each crane cabin shall, where practicable, be equipped with a reverse cycle airconditioner maintained in workable order. Where it is not practicable to install air conditioning a crane cabin shall contain a radiator and fan, both of which shall be maintained in good condition.

2. CLOTHING AND PROTECTIVE EQUIPMENT

(a) Where an employee is required to work in a place where, in the absence of protective clothing or footwear, the employees' clothing or footwear will become wet, such employee shall be provided with waterproof clothing and boots.

(b) The purchase of safety footwear shall be subsidised by the employer and such footwear can be replaced when required due to wear, loss or damage. On each occasion an employee obtains safety footwear, the employer shall subsidise the cost to an amount of $46.90. The employee will purchase the approved type safety footwear and shall present the receipt in order to obtain the subsidy.

(c) All employees shall be eligible for the footwear subsidy after one month's qualifying service with the employer.

(d) The purchase of a Tasmanian Bluey Jacket shall be subsidised by the employer and can be replaced when required due to wear, loss or damage. On each occasion the employer shall subsidise the cost of such jacket to an amount of $46.90.

(e) Each employee shall be issued with an approved safety helmet and suitable combination safety and sun glasses.

(f) Compensation to the extent of any damage sustained to personal clothing shall be made where, during the course of the work, such clothing is damaged.

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PART VIII - TRAINING AND RELATED MATTERS

1. TRAINING LEAVE

(a) Following proper consultation, which may involve the setting up of training committees, the employer shall develop a training policy and programme consistent with:

(i) the current and future skill needs of the enterprise;

(ii) the size, structure and nature of the operations of the enterprise;

(iii) the need to develop vocation skills relevant to the enterprise and the industry, through courses conducted by accredited educational institutions and providers.

(b) Where agreed by the employer that additional training should be undertaken by an employee, that training may be undertaken either on or off the job, provided that if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. An employer shall not unreasonably withhold such paid training leave.

(c) First Aid Training

(i) Each employee shall be allowed time off without loss of ordinary pay for up to two days instruction in first aid by the St. John's Ambulance or other like body recognised as an authority in first aid training.

(ii) Such leave will be granted on request provided it is taken at a mutually convenient time arranged between the employee and the employer.

(iii) The employee shall provide the employer with proof of attendance for the duration of the period of leave.

2. TRADE UNION TRAINING LEAVE

(a) An employee nominated by the union may be granted leave on ordinary pay to attend approved union training courses, subject to:

(i) the employer shall receive written notification from the union setting out the times, dates, content and venue of the course.

(ii) the scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations.

(iii) an employer shall not be liable to pay an employee attending such course for more than five days in any one year;

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(iv) leave shall not be cumulative.

(b) The granting of such leave shall be subject to the employer's convenience and shall not unduly affect the employer's operations.

PART IX - UNION RELATED MATTERS

1. RIGHT OF ENTRY

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

2. UNION DELEGATES

A workplace union delegate appointed by the employees at each place of work shall be allowed the necessary time during working hours to interview the employer or nominated employer representative on matters affecting employees engaged under this award.

3. PREFERENCE OF EMPLOYMENT

Preference of employment shall be given to financial members of the Construction Forestry Mining and Energy Union.

4. TIME AND WAGES BOOK

(a) Each employer shall keep a time and wages book showing the name of each employee, classification, time of starting and finishing work each day, the amount of overtime worked and all amounts paid as wages, special rates and allowances.

(b) Any time occupied by an employee in the making of any records, shall be treated as time worked.

(c) An employer may provide a mechanical/electronic device for the purpose of recording the time worked by each employee, and such device shall be recognised as the time and wages record.

(d) The time and wages record shall on request be produced at reasonable times by the employer for inspection to an official of the union duly authorised in writing by the President or Secretary of the Construction Forestry Mining and Energy Union at the place where the time and wages book is kept.

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(e) The official making such inspection shall be permitted to make and retain a copy of any entry in such time and wages book. The official shall if required by the employer produce for inspection any such copy.

P C Shelley
DEPUTY PRESIDENT

28 July 2005