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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or award variation

National Union of Workers,
Tasmanian Branch
(T.3789 of 1992)

Federated Clerks Union of Australia,
Tasmanian Branch
(T.3815 of 1992)

RUBBER TRADES AWARD

COMMISSIONER R J WATLING 1 June 1992

Wage rates - State Wage Case November 1989 - Structural Efficiency Principle - Second stage increase – application granted – ffpp 27 May 1992

ORDER BY CONSENT -

No. 1 of 1992
(Consolidated)

AMEND THE **RUBBER TRADES AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

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

2. SCOPE

This award is established in respect of:-

(a) retail sale, storing and distribution of rubber tyres and may include incidental products and services; and/or

(b) vulcanising, retreading, repairing and fitting of rubber tyres; and/or

(c) manufacture of rubber tyres and other rubber goods.

PROVIDED that this award shall not include work falling within the scope of the Automotive Industries Award.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation as from the beginning of the first full pay period commencing on or after 27 May 1992.

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

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 2 of 1990 (Consolidated) and Nos 1 and 2 of 1991.

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

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6. PARTIES AND PERSONS BOUND

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

(a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;

(b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;

(c) the following organisations of employees in respect of whom award interest had been determined:

  (i) the Federated Clerks Union of Australia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

  (ii) the Shop Distributive and Allied Employees' Association - Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

  (iii) The Australian Workers' Union, Tasmania Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

  (iv) the National Union of Workers, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 Scope;

  (v) the Transport Workers' Union of Australia, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(d) the following organisations of employers in respect of whom award interest had been determined:

  (i) the Tasmanian Confederation of Industries.

7. DEFINITIONS

(a) **'Afternoon shift'** means any shift finishing after 6.00 p.m. and at or before midnight.

(b) **'Casual Employees'** means employees who are employed on a casual basis and includes persons who are employed for periods not exceeding 5 days at any one time.

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(c) **'Clerk'** includes book-keepers, timekeepers, cashiers, typists and/or stenographers, calculating and/or accounting machine operators.

(d) **'Commercial Traveller'** shall mean a person employed- outside the employer's place of business in the process, trade, business or occupation of:

soliciting orders for products to be subsequently sold by the purchaser or used directly by the purchaser in his business or occupation.

PROVIDED that this definition shall not include a "delivery serviceman" who may, incidental to his primary duties, take orders for subsequent deliveries.

(e) **'Delivery Serviceman'** shall mean an employee whose principal duties include the handling, pick-up and delivery of products. The duties of this classification may include the fitting and servicing of tyres away from the employer's premises and routine order taking.

(f) **'Employee handling money'** shall mean an employee who collects or pays out money and who is responsible for the safe custody of the amounts so collected or paid.

(g) **'Factory Hand'** shall mean an employee employed in a tyre retreading factory.

(h) **'Indoor Salesman'** shall mean an employee principally engaged in selling products from within the employer's premises.

(i) **'Night shift'** means any shift finishing subsequent to midnight, and at or before 8.00 a.m.

(j) **'Part-time employee'** shall mean an employee who is engaged on a weekly basis for not less than 20 hours or more than 38 hours per week but shall not include a casual employee (as defined).

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

(l) **'Tradesman'** shall mean an employee who has successfully completed an apprenticeship in fitting/turning or mechanical fitter as proclaimed in the Apprentices Act 1942, or gained Tradesman's Rights under the Tradesmen's Rights Regulations Act 1964.

(m) **'Tyre Serviceman'** subject to the proviso set out hereunder, shall mean an employee principally engaged on changing tyres and wheel balancing. It shall also include an employee who reasonably, incidental to his principal functions, may sell tyres direct to the customers for fitting elsewhere.

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PROVIDED that:

(i) **'a Tyre Serviceman Grade 1'** shall mean an employee fitting tyres to rims under 508 mm in diameter;

(ii) **'a Tyre Serviceman Grade 2'** shall mean an employee fitting tyres to rims 508 mm in diameter and over.

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

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

8. WAGE RATES

DIVISION A - EMPLOYEES OTHER THAN CLERKS

1. WAGE RATES

The wage rates set out hereunder shall be the rates payable to adult employees classified herein.

	Classification	Base Rate Per Week $	Supplementary Payment $	Total Wage $
(a)	Tyre serviceman - Grade 1	311.20	6.20	317.40
(b)	Tyre serviceman - Grade 2	317.40		317.40
(c)	Factory hand	317.40		317.40
(d)	Indoor salesman	351.60		351.60
(e)	Delivery salesman	317.40		317.40
(f)	Commercial traveller	374.90		374.90
(g)	Wheel aligner - (non tradesman)	326.10	12.70	338.80
(h)	Wheel aligner -(tradesman (as defined))	386.80		386.80

2. JUNIORS

The minimum rates of wages that may be paid by employers to junior male workers shall be the undermentioned percentages of the basic wage plus the margin for the class of work performed, the adjustment to be calculated to the nearest 10 cents.

	%
Under 16 years of age	58
16 to 17 years of age	65
17 to 18 years of age	75
18 to 19 years of age	85
19 to 20 years of age	100

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3. LEADING HANDS

		Amount Per Week $
(a)	In charge of less than 10 employees	16.50
(b)	In charge of 10 and not more than 20 employees	25.00
(c)	In charge of more than 20 employees	33.50

The above rates shall be paid over and above the highest classification rate which applies to employees under Leading Hand's charge or over and above the Leading Hand's normal classification, whichever is the highest.

DIVISION B - CLERKS

1. WAGE RATES

The wage rates set out hereunder shall be the rates payable to adult employees classified herein.

		Amount Per Week $
(a)	1st year's adult experience	302.80
	2nd year's adult experience	324.00
	3rd year's adult experience and thereafter	351.60
(b)	An accountant or chief clerk wholly responsible for the office work and who prepares the balance sheet and profit and loss account	467.60
(c)	A clerk who is in charge of and responsible for the work of:-	
	(i) 5 or more employees	415.50
	(ii) 3 or 4 employees	399.50
	(iii) 2 employees	391.50

'Employees' in (c) above shall mean any male or female clerk, typist or stenographer and shall include the Clerk-in-Charge.

2. JUNIORS

The minimum. rates of wages that may be paid to juniors shall be the undermentioned percentage of the second year adult rate as prescribed in subclause 1 - Wage Rates of this Division, adjusted to the nearest 10 cents.

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		Percentage of Second Year Adult Rate %	Amount Per Week $
(a)	Under 16 years of age	40	129.60
	16 to 17 years of age	45	145.80
	17 to 18 years of age	55	178.20
	18 to 19 years of age	70	226.80
	19 to 20 years of age	80	259.20
	20 to 21 years of age	90	291.60

(b) Proviso

When determining the margin payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established, experience obtained after reaching the age of 18 years shall be counted as adult experience.

3. ADDITIONAL PAYMENTS

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

	Amount Per Week $
Under 16 years of age	1.00
16 to 17 years of age	1.20
17 to 18 years of age	1.30
18 to 19 years of age	1.50
19 to 20 years of age	2.00
20 to 21 years of age	2.10
21 years of age and over	2.70

4. TRAINEE CLERK (AS DEFINED)

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

By taking the appropriate wage rate for a junior clerk as prescribed in subclause 2. Juniors of this division then multiplying it by 39 and dividing it by 52 (39 being the actual number of weeks spent on the job).

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

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Provided further that the Trainee Clerk (As Defined) wage rate shall be calculated in multiples of ten (10) cents with any result of five (5) cents or more being taken to the next ten (10) cents.

CONDITIONS FOR EMPLOYEES IN DIVISION A - EMPLOYEES OTHER THAN CLERKS

9. ALLOWANCES

(a) An employee who as part of his employment is called on to drive a truck and/or operate a hydraulic hoist on a truck and/or drive a forklift or act as a storeman shall be paid in addition to his wage an amount of $2.30 per day for each day or part thereof whilst so engaged.

(b) An employee who is required to fit earthmoving, grader, truck or tractor tyres away from his employer's place of business shall be paid an amount of $2.10 per day for each day or part thereof whilst so engaged.

(c) An employee who is required to fit tyres, other than those referred to in subclause (b) of this clause, away from his employer's place of business shall be paid an amount of $1.00 per day for each day or part thereof whilst so engaged.

(d) Employees handling money (as defined) mentioned in Clause 8 - Wage Rates, Division A - Employees other than Clerks, subclause 1 Wage Rates, classifications (a) to (h) of this award, required to collect cash from customers shall be paid the following additional amounts per week:

	Amount Per Week $
Up to $20	0.40
over $20 but not exceeding $200	0.90
over $200 but not exceeding $600	1.80
over $600 but not exceeding $1,000	2.70
over $1,000	3.50

(e) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Apprentices Act 1942 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.50 per week.

Provided that such an allowance shall not be subject, to an adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

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10. 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) in any one or more of the occupations to which this award applies.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 15 - Holidays with Pay of this award, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

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

(c) Calculation of Continuous Service

For the purposes of this clause service shall be deemed to be continuous notwithstanding:

(i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

(ii) any absence from work on account of personal sickness or accident and in calculating the period of 12 months' continuous service absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service; or

(iii) any absence with reasonable cause, proof whereof shall be upon the employer, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months' continuous service.

(d) Proportionate Leave on Termination of Service

If after 1 month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage as follows:

3.08 hours for each completed week of continuous service.

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(e) Leave to be Given and Taken

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

(f) Broken Leave

The annual leave provided for by this clause shall be given and taken in one consecutive period at a time fixed by the employer within 6 months of such leave becoming due; or if the employer and the employee so agree in 2 separate periods; the lesser of which shall be of not less than 7 consecutive days provided that no entitlement shall be permitted to accrue beyond 12 months after becoming due.

(g) Calculation of Service

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

(h) Payment for Period of Leave

(i) Each employee before going on leave shall be paid the amount of wages he would have received in respect of the working time which he would have worked had he not been on leave during the relevant period or periods plus a loading equal to 17 1/2% of the amount paid in respect of annual leave.

(ii) Shift Workers

Where an employee on shift work would have received shift penalties and shift allowances had he not been on leave during the relevant period and those penalties and allowances would have entitled him to a loading in excess of the 17 1/2% calculation then the rostered earnings calculation shall apply in lieu of the 17 1/2% loading.

(iii) The provisions of this subclause shall apply to proportionate leave on termination of service.

11. CHANGE ROOM AND ABLUTION FACILITIES

The employer shall provide a change room in which there shall be installed clothing lockers (one locker for each employee). The employer will provide in such change house or in a place convenient thereto washbasins and/or showers and a sufficient supply of hot water.

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12. COMPASSIONATE LEAVE

(a) An employee shall be entitled to a maximum of 3 days without deduction of pay on each occasion of the death within the State, of the employee's wife, de facto wife, father, mother, brother, sister, child, stepchild, mother-in-law, father-in-law, stepmother, stepfather, grandfather, or grandmother.

(b) On each occasion the employee travels outside the State in connection with the death of one of the relatives specified, he shall be entitled to an additional 2 days without deduction of pay.

13. CONTRACT OF EMPLOYMENT

(a) Except as hereinafter provided, employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.

Any employee employed by the week shall, provided he is ready, willing and available for work, be paid the weekly wage prescribed for a full week's work and in addition thereto such overtime or other penalty rates, if any, that may have occurred during the relevant period.

(b) With the exception of casual employees employment shall be terminated by a week's notice on either side given at any time during the week or by the payment of forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for neglect of duty or misconduct, and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully employed through any breakdown in machinery or any stoppage of work, by any cause for which the employer cannot be reasonably held responsible.

PROVIDED that during the first month of employment termination may be effected by either party on the giving of one day's notice or the payment or forfeiture of a day's pay as the case may be.

(c) Part-time employees shall be entitled to the holidays, sick leave and annual leave as prescribed in Clause 16 - Holidays With Pay, Clause 10 - Annual Leave and Clause 34 - Sick Leave provided that such payment therefore shall be made at the rate normally paid to such employees for a similar period of time worked.

(d) Casual employees (as defined) shall be paid 15% more than the appropriate rate specified herein for the particular class of work performed.

(e) For the purpose of determining the hourly rate payable to part-time and casual employees the appropriate weekly rate shall be divided by forty. Provided that the divisor shall be reduced to thirty-eight as from 15 July 1990.

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(f) (i) An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

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

14. ENTERPRISE FLEXIBILITY

(a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.

(b) An agreement shall be subject to the following requirements:-

(i) The majority of employees affected by the change must genuinely agree to the change.

(ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.

(iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.

(iv) The relevant union or unions must be a party to the agreement.

(v) The relevant union or unions shall not unreasonably oppose any agreement.

(c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:-

(i) The term of the agreement.
(ii) The parties covered by the agreement.
(iii) The classes of employees covered by the agreement.
(iv) The means by which a party may retire from the agreement.
(v) The means by which the agreement may be varied.
(vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.

(d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

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15. EXISTING WAGE RATES

Any employee who is, at the date of this award, in receipt of a wage in excess of that herein prescribed shall not have his rate of wage reduced as a result of this award.

16. HOLIDAYS WITH PAY

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

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

PROVIDED that where consequent upon any visit to Australia by Her Majesty the Queen or any other member of the Royal Family a public holiday is proclaimed by the Governor in Council or otherwise gazetted by the Tasmanian Government under State Act throughout the State or part thereof and under the Tasmanian Industrial Commission such day shall within the defined locality be deemed to be a holiday for the purpose of this award.

(b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holidays, he had been at work.

(c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed elsewhere in this award.

(d) Holidays, falling on weekends - where any holiday referred to in subclause (a) of this clause falls on a Saturday or Sunday, then the next ordinary working day shall be observed as a paid holiday.

17. HOT WORK

Where the temperature in a rubber works or factory is unavoidably high, the ventilation shall be adequate to maintain a reasonable limit, i.e., a temperature of not more than 43.3 degrees Celsius by a dry bulb thermometer. Where the temperature is greater than 43.3 degrees Celsius, the working time of employees in such places shall not exceed 6 hours per day with payment as for 8 hours work, provided that the foregoing provisions shall not apply if the temperature of 43.3 degrees Celsius or less, using a dry bulb thermometer, is maintained for at least a three-fourth proportion of the working shift in the place of actual work wherein the employee is occupied.

The employer shall supply a thermometer which shall be readily accessible and available to employees to test the temperature at their working places at all reasonable times.

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18. HOURS

(a) Subject to Clause 19 - Implementation of 38 Hour Week and Clause 20 - In-Plant Discussions of this award the ordinary hours of work shall be an average of 38 per week worked on one of the following basis:

(i) 38 hours within a work cycle not exceeding seven (7) consecutive days; or

(ii) 76 hours within a work cycle not exceeding fourteen (14) consecutive days; or

(iii) 114 hours within a work cycle not exceeding twenty-one (21) consecutive days; or

(iv) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days; or

(v) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days in establishments where the method of banking of rostered days off has been agreed to.

(b) Subject to subclause (a) of this clause the ordinary hours of work may be worked between the hours of 6.30am and 6.00pm Monday to Friday inclusive.

PROVIDED that where the hours of existing employees are affected by this change in the commencement time notice of not less than four weeks' shall be given to the employees and the appropriate union.

(c) The ordinary hours of work prescribed herein shall not exceed eight hours (exclusive of meal breaks) on any day.

(d) An employee shall not be required to work on any day (including Saturdays, Sundays and Public Holidays) for more than 5 hours without a meal break of not less than 30 minutes or more than 60 minutes duration. Such meal break shall be taken between the hours of 11.00am and 3.00pm.

PROVIDED that where the employer and the majority of employees agree 6 hours may be worked before a meal break is taken.

Meal breaks may be staggered or changed to meet operations requirements.

(e) Saturday and Sunday Work

(i) An employer, the employee and the appropriate union(s) may agree that ordinary working hours be performed on a specific Saturday or any number of Saturdays for any individual employee upon the following conditions specified in this subclause.

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(A) The employee is paid at the rate of time and one half for all ordinary working hours on a Saturday.

(B) The employee's weekend shall become the Sunday and Monday immediately following any Saturday worked as ordinary hours and any work performed on the said following Monday shall be paid at overtime rates as prescribed in Clause 25 - Overtime of this award.

(C) The agreement of the appropriate union(s) shall not unreasonably be withheld.

(ii) Notwithstanding subclause (a) hereof:

(1) An employer and employee and their union where applicable may agree that ordinary working hours be performed on Saturdays and/or Sundays.

(2) An employee who works ordinary hours on a Saturday in accordance with this subclause shall for all ordinary time worked on that day be pad at the rate of time and one half.

(3) An employee who works on a Sunday in accordance with this subclause shall for all ordinary time worked on that day be paid at the rate of double time.

(iii) In the event of a dispute about the operation of this clause the dispute shall be referred to the Tasmanian Industrial Commission.

19. IMPLEMENTATION OF 38-HOUR WEEK

(a) Subject to Clause 18 - Hours and except as provided elsewhere in this award the method of implementing the 38 hour week may be one of the following:

(i) By employees working less than 8 ordinary hours each day; or

(ii) by employees working less than 8 ordinary hours on one or more days each week; or

(iii) by fixing one day in 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 day off during that cycle; or

(v) by accruing an entitlement to rostered days off up to a maximum of ten (10) days, or as otherwise mutually agreed and thereby averaging 38 hours over a period not exceeding twelve (12) months.

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(b) In each establishment, 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, the objective being to reach agreement on the method of implementation. Subsequently, such method may be altered by mutual agreement.

In the absence of agreement at this level, the procedure for resolving grievances shall be applied in accordance with Clause 31 - Settlement Of Disputes. This procedure shall be applied without delay.

(c) 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.

(d) Except as provided in subclause (e) of this clause where the method of the employee working ordinary hours provides a day or days off during a particular work cycle, such day or days off may be taken by mutual agreement between the employer and employee concerned and in the absence of agreement the employer shall provide the employee with 24 hours notice for the time of taking such day or days off.

(e) The day or days scheduled to be the day or days off in accordance with subclauses (a)(iii), (iv) and (v) of this clause may be worked as an ordinary day or days without penalty when substituted by another day or days by agreement between the employer and the employee concerned or, where a number of employees are concerned, by agreement between the employer and the majority of employees.

(f) Where a system of working is adopted to allow one rostered day off in each four week cycle or the banking of rostered days off, an employee shall not be entitled to more than 13 such rostered days off in any twelve month period.

20. IN-PLANT DISCUSSIONS

(a) Procedures shall be established for in-plant discussions the objective being to agree on the method of implementing the 38 hour working week in accordance with Clause 18 - Hours of the award, entailing an objective review of current practices to establish where improvements can be made and implemented.

(b) The procedures should allow for in-plant discussions to continue even though all matters may not be resolved by the date of operation of the 38 hour working week coming into this award.

(c) The procedures should make suggestions as to the recording of understandings and the methods of communicating agreement and understandings to all employees.

(d) The procedures should allow for the monitoring of agreements and understandings reached in-plant.

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(e) In cases where agreement cannot be reached in the first instance or where problems arise after initial agreements or understandings have been achieved in-plant, a formal monitoring procedure shall apply. In such case Clause 32 - Settlement of Disputes of this award will apply.

(f) There shall be on-going regular reviews of work practices to establish where improvements can be made and implemented.

21. MATERNITY LEAVE

(a) Eligibility for Maternity Leave

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

For the purposes of this clause:

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

(ii) Maternity leave shall mean unpaid maternity leave.

(b) Period of leave and commencement of leave

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

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

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

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

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

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(c) Transfer to a safe job

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

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

(d) Variation of period of maternity leave

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

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

(e) Cancellation of maternity leave

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

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

(f) Special maternity leave and sick leave

(i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

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(b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(iii) For the purposes of subclauses (g), (h) and (i) hereof, maternity leave shall include special maternity leave.

(iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c), to the position she held immediately before such transfer.

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

(g) Maternity leave and other leave entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (c) and (f) hereof does not exceed 52 weeks;

(i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled.

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

(h) Effect of maternity leave on employment

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

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(i) Termination of employment

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(j) Return to work after maternity leave

(i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(k) Replacement employees

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

(ii) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

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

22. MEAL ALLOWANCE

Any employee required to work overtime for more than 2 hours immediately following his ordinary working hours, without being notified on his previous shift that he will be so required to work, shall be supplied with a meal by the employer or paid $4.90 in lieu of same.

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If an employee pursuant to such notice, has provided a meal and is not required to work overtime, he shall be paid $4.90 for each meal so provided.

23. MIXED FUNCTIONS

An employee engaged for more than three hours of his/her time on one day or shift on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for such day or shift. If for less than three hours of his/her time on one day or shift he/she shall be paid the higher rate for the time so worked.

24. OCCUPATIONAL SUPERANNUATION

(a) Definitions

'The Fund' shall mean TASPLAN or an alternative fund as referred to in subclause (c) hereof provided that such alternative fund is approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'Eligible Employee' shall mean an employee, whether weekly, part-time or casual, who has had at least 3 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.

'Ordinary time earnings' shall mean the classification rate including loadings for shift work, part-time or casual work and any permanent all purpose allowances but shall exclude overtime payments, leave loading and annual and/or long service leave payments on termination of employment and allowances in the nature of reimbursement (such as meal money).

(b) Contributions

(i) An employer shall make a contribution equivalent to 3% of ordinary time earnings (as defined) into the fund in respect of all eligible employees (as defined).

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

(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.

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(c) Alternative Funds

(i) An employer shall not be required to pay a contribution on behalf of any eligible employee into more than one fund for the same period of employment.

(ii) Where an employer is already, at the time this clause is included in the award, paying on behalf of the employee a contribution for occupational superannuation of not less than 3% of ordinary time earnings into an Alternative Fund (as referred to in subclause (a) hereof) then the employer may continue to use that fund provided that contributions are made in accordance with this clause.

(iii) Where an Alternative Fund (as referred to in subclause (a) hereof) is in use for the majority of employees in a particular establishment then such alternative fund may be used for the purposes of this clause provided that contributions are made as herein prescribed.

(iv) Where agreement is reached between an employer and a union an alternative fund (as referred to in subclause (a) hereof) may be used for the purposes of contributions payable under this clause.

(d) Date of Operation

The provisions of this clause shall operate from, and contributions shall be payable from, the first pay period to commence on or after 1 September 1989.

25. OVERTIME

(a) For all work performed in excess of 38 hours per week, or before the usual time of starting or after the usual time of ceasing work, or on a Saturday, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter, such double time to continue until the employee has been relieved from duty for at least 10 hours.

PROVIDED that an employee who works ten minutes or more past the time fixed for ceasing work shall be paid the appropriate overtime rate for all time worked after the time fixed for ceasing work.

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

(b) If an employee is required to work overtime sufficiently long to preclude him from having 10 hours rest before his next ordinary starting time he shall be entitled to be absent until he has had 10 consecutive hours off duty without deduction of pay for ordinary time off duty occurring during such absence.

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(c) For work done by employees during their ordinary meal break, and thereafter until a meal break is allowed, payment shall be made at the rate of time and one half.

PROVIDED that an employee shall not work more than 5 hours without a meal break.

(d) In computing overtime each day's work shall stand alone.

(e) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by forty. Provided that the divisor shall be reduced to thirty-eight as from 15 July 1990.

(f) Call Back

(i) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours work at the appropriate rate for each time he is so recalled; provided that except in cases of unforeseen circumstances arising the employee shall not be required to work the full three hours if the job he was recalled to perform is completed within a shorter period.

Where a second or subsequent recall occurs within the period covered by the minimum payment for the first or earlier recall, payment shall only be made for time outside such period.

(ii) The provisions of paragraph (e)(i) above shall not apply in cases where it is customary for an employee to return to his employer's premises for periods not exceeding thirty minutes each to perform a specific job outside his ordinary working hours in which case he shall be paid for a minimum of one hours work at the appropriate rate for each time he is so recalled; or where the overtime is continuous (subject to a reasonable meal break) with the commencement of ordinary working time.

(iii) Where the actual time worked is less than three hours on such recall or on each of such recalls, overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (b) of this clause.

(iv) This subclause shall not apply to a tyre-serviceman who is required by his employer to perform work away from the employer's depot after normal business hours.

(g) A tyre-serviceman recalled outside his normal working hours to fit tyres or perform other work within the scope of his normal duties shall be paid at the rate of double time for the period of time he is so recalled.

The calculation of the period of time of duty shall include only the time reasonably occupied in travelling to work between the time of the employee's departure from his normal place of residence and the time of his return thereto provided that:

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(i) in the case of the first call back in any one day an employee shall be paid as for at least a period of two hours at the rate of double time; and

(ii) in the case of each subsequent call back in the same day as for at least a period of one hour at the rate of double time. Provided that within a period covered by the minimum payment in paragraph (i) above, payment shall only be made for time outside such period;

(iii) the conditions as specified in subclause (e) (iii) of this clause shall apply in respect of this subclause.

(h) Sunday Work

For all work performed on Sundays, payment shall be made at the rate of double time.

(i) Holiday Work

For all work performed on any of the holidays mentioned in Clause 16 - Holidays With Pay of this award payment shall be made at the rate of double time and one half.

(j) Where requested by an employee and agreed to by an employer, time off in lieu of payment for overtime may be taken. Time off shall be calculated by multiplying the hours worked by the appropriate overtime rate. Alternatively time off equivalent to the period of overtime worked may be taken in which case the employee shall be paid the appropriate penalties for such overtime work less the single time component for time taken in lieu of payment.

26. PAYMENT OF WAGES

(a) Wages shall be paid weekly, and shall be paid in full during working hours not later than 2 working days following the termination of the working week, provided that in any week in which a holiday prescribed by this award falls on either of those 2 days, that day shall not be taken into consideration as one of the 2 days.

Where agreement is reached between an employer and a majority of employees, wages may be paid fortnightly on the basis of one week's wages in arrears and one week's wages in advance.

(b) At the discretion of the employer wages may continue to be paid by the current method or by direct transfer to an employee's bank (or other recognised financial institution) account.

Where an employer elects to pay employees by direct transfer the employer shall pay to employees, in addition to any other entitlements, an amount to cover government fees and charges for one deposit and one withdrawal per pay.

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(c) An employee kept waiting for his wages on pay day after the usual time for ceasing work shall be paid at overtime rates, with a minimum payment of a quarter of an hour.

(d) An employee whose services are dispensed with shall be paid the wages due to him on the day of dismissal, or they shall be forwarded to him by post on the day following.

(e) Payment of wages shall be made on the day before a holiday if a holiday falls on pay day.

27. PIECE-WORK

No employee shall be allowed to work on piece or contract rates.

28. PREFERENCE OF EMPLOYMENT

(a) Preference in engagement of employees shall be given equally to persons in the following categories who are available and suitable:

(i) members of the Tasmanian Branch of the appropriate union;

(ii) persons who are prepared to give forthwith a written undertaking to apply to join the Tasmanian Branch of the appropriate union within 14 days;

(iii) Concientious objectors.

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

(b) Concientious objectors shall pay a sum equivalent to the subscription to the appropriate union, to a charity to be agreed upon between the person concerned and the appropriate union and in default of agreement to consolidated revenue.

(c) This clause shall not apply in respect of engagement of employees in the following categories:

(i) employees sought for confidential or managerial positions;

(ii) owners of businesses or their spouses.

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29. PROTECTIVE CLOTHING AND/OR EQUIPMENT

(a) Employees engaged in buffing shall be supplied by the employer with respirator and goggles.

(b) In occupations which involve excessive wear on employees' clothing the employer, at his expense, shall provide suitable reinforcement to protect the employees' clothing from undue wear.

(c) The employer shall supply wet weather gear where necessary.

(d) The employer shall on request supply safety footwear and/or overalls, cost of which shall be subsidised to the extent of fifty per cent.

30. REST PERIOD

(i) Indoor Salesmen, Commercial Travellers and Clerks

A rest period of 10 minutes' duration each morning and afternoon in the employer's time.

(ii) All Others

A rest period of 15 minutes' duration each morning or afternoon in the employer's time.

31. RIGHT OF ENTRY OF UNION OFFICIALS

For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter the employer's premises during the mid-day meal break on the following conditions:

(i) that he produces his authority to the gate-keeper or such other person as may be appointed by the employer;

(ii) that he interviews employees only at places where they are taking their meals; and

(iii) that if any employer alleges that a representative is unduly interfering with his work or is creating dissatisfaction amongst his employees or is offensive in his methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry.

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32. SETTLEMENT OF DISPUTES

Subject to the provisions of the Industrial Relations Act 1984 any grievance or claim arising out of the work place shall be dealt with in accordance with the following procedure:

(a) the matter shall be first discussed between the employee and the immediate supervisor.

(b) if not resolved the matter shall be discussed between the employee, the employees' delegate and the employer.

(c) if the matter is still not settled it shall be referred to the State Secretary of the appropriate union and discussions may take place between the union and the company and if the company chooses, its representative.

(d) whilst the above procedure takes place the status quo that applied prior to the dispute arising shall remain and no industrial action shall be taken.

(e) if the matter is still not settled it will be referred to the Tasmanian Industrial Commission.

33. SHIFT WORKERS

(a) A shiftworker shall in addition to his ordinary rate be paid per shift of 8 hours at the rate of 30 per cent of one fifth of $114.00 when on afternoon or night shift.

(b) Shift-workers who work on any afternoon or night shift (as defined) which does not continue for at least 5 successive afternoons or nights shall be paid at the rate of time and a half.

34. SICK LEAVE

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

    (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

    (ii) he shall, 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 inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

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(iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

(iv) he shall not be entitled in any year to sick leave in excess of seventy six hours of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

(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 2 weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

(b) (i) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.

(ii) An employee who after two years of service commencing from the 4th day of July, 1972, has accumulated sick leave entitlements shall be entitled to be paid the following:

2 years of service	50% of accumulated sick leave
3 years of service	55% of accumulated sick leave
4 years of service	60% of accumulated sick leave
5 years of service	65% of accumulated sick leave
6 years of service	70% of accumulated sick leave
7 years of service	75% of accumulated sick leave
8 years of service	80% of accumulated sick leave
9 years of service	85% of accumulated sick leave
10 years of service	90% of accumulated sick leave
11 years of service	95% of accumulated sick leave
12 years of service	100% of accumulated sick leave

(c) any sick leave accumulation standing to the credit of an employee as at 15 July 1990 shall be adjusted to the ratio of 38/40.

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35. STRUCTURAL EFFICIENCY

(a) Award Modernisation

(i) The parties to the award are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhance skills and job satisfaction and will assist positively in the restructuring process.

(ii) The union(s) are prepared to discuss matters raised by the employers for increased flexibility. This process is regulated at the enterprise level in accordance with Clause 14 - Enterprise Flexibility hereof. The union(s) will be readily available to discuss award changes at the enterprise level. Accordingly and in conjunction with the testing of the new award structure the parties will identify and discuss award changes that might provide for productivity, efficiency and flexibility improvements across the industry to be embraced within the broad structure of the award.

(iii) The parties will co-operate to review the award to remove obsolete reference, remove ambiguities and discriminatory provision and such other matters that may be identified that will enhance the process of modernising the terms of the award.

(iv) The parties will co-operate positively to eliminate demarcation and optimising the multi-skilling and cross-skilling of employees at each enterprise and at the industry level.

(b) Workplace Consultation

(i) The development of effective participative/consultative practices is important in the process of award restructuring and can lead to advantages for both employers and employees. It is therefore recommended that participative/consultative mechanisms be implemented at the enterprise level where agreement exists between employer and employees and the appropriate union(s).

(ii) The process of consultative practices is a mechanism through which employees can be involved in and positively contribute towards the management decision making process. Discussions are encouraged to be reached through consultative mechanisms/practices, however, managerial prerogative is acknowledged.

(iii) The process of consultative practices may be used to implement the provisions of Clause 14 - Enterprise Flexibility.

(iv) Where Enterprise Consultative Committees have been agreed to be established, as far as is practicable employers and employees shall be at least equally represented on the Committee.

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(d) Classification Structures

The parties to the award are committed to the implementation of new classification structures consistent with the Structural Efficiency Principle.

CONDITIONS FOR EMPLOYERS IN DIVISION B - CLERKS

36. GENERAL CONDITIONS

The provisions of the following clauses of this award shall also apply to employees in this division:

9. Allowances
10. Annual Leave
11. Change Room And Ablution Facilities
12. Compassionate Leave
13. Contract Of Employment
14. Enterprise Flexibility
15. Existing Wage Rates
16. Holidays With Pay
17. Hot Work
18. Hours
19. Implementation of 38 Hour Week
20. In-Plant Discussions
21. Maternity Leave
22. Meal Allowance
23. Mixed Functions
24. Occupational Superannuation
25. Overtime
26. Payment Of Wages
27. Piece-Work
28. Preference Of Employment
29. Protective Clothing And/Or Equipment
31. Right Of Entry Of Union officials
32. Settlement Of Disputes
33. Shift Workers
34. Sick Leave
35. Structural Efficiency

37. ESTIMATING SERVICE - CLERKS

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

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38. REST PERIOD

A rest period of 10 minutes' duration each morning and afternoon in the employer's time.

39. TRAINEE CLERK (AS DEFINED)

(a) Trainee Clerk (as defined) shall be engaged for a period of twelve (12) months as a full time employee, provided that a trainee shall be subject to a satisfactory probation period of up to one (1) month.

(b) Where possible traineeship positions should be additional to normal staff numbers provided that no existing weekly employees shall be displaced by a trainee.

(c) A trainee clerk (as defined) will receive on-the-job training by the employer as specified in the training agreement (as defined) and off-the-job training will be provided through the Division of Technical and Further Education or such other institution approved by the Training Authority of Tasmania.

(d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.

(e) Time spent off-the-job on training shall be allowed without loss of continuity of employment.

(f) Where an employer continues the employment of a trainee clerk (as defined) after completion of the "traineeship period", such "traineeship period" shall be counted as service for the purpose of the award.

(g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular section, overtime is involved in the operation of that section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.

(h) The union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the union.

(i) Trainees shall not perform higher duties unless in the course of their traineeship.

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(j) Trainees shall be exempt from action in respect of industrial disputes. However the employer shall observe the provisions determined by the Training Authority of Tasmania in respect of the use of trainee clerks (as defined) in the time of industrial disputes.

R.J. Watling
COMMISSIONER

1 June 1992