

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.23 application for award or variation of award

**The Federated Engine Drivers' and Firemen's Association of Australasia,
Tasmanian Branch
(T.3292 of 1991)**

**Metals and Engineering Workers' Union
(T.3330 of 1991 and T.3719 of 1992)**

**Federated Clerks Union of Australia,
Tasmanian Branch
(T.3354 of 1991)**

**The Building Workers' Industrial Union of Australia
(Tasmanian Branch)
(T.3601 of 1991)**

SHIPBUILDERS AWARD

**ORDER - No. 3 of 1992
(Consolidated)**

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

1. TITLE

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

2. SCOPE

This award is established in respect of the industries of:

- (a) constructing, altering or repairing ships or boats;
- (b) dunnaging of ships' holds.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first pay period commencing on or after 9 March 1992.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 1 of 1992 (Consolidated) and No. 2 of 1992.

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

6. PARTIES AND PERSONS BOUND

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

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

7. DEFINITIONS

'Shipbuilding', for the purposes of this award shall mean any work on any ship including fitting out, constructing or repairing any steamer, lighter, punt, yacht, barge, pontoon, or any hull of like nature, constructed of wood, steel or other metal, fibreglass, or concrete or any material of a like substance used for transport purposes, or the general repairing of such vessels or any floating structure.

'Ship's carpenter or joiner' means any employee making and fixing all joinery necessary for the fitting out of such ships and/or general repairing of same.

'Shipwright' means an employee engaged on any work described in 'Shipbuilding' above.

'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.

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

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

8. WAGE RATES

**DIVISION A - EMPLOYEES ENGAGED ON THE CONSTRUCTION, ALTERATION
OR REPAIRING OF SHIPS OR BOATS OR DUNNAGING OF SHIPS HOLDS**

1. WAGES

Adult employees of a classification specified hereunder shall be paid the amount assigned to that classification.

Classification	Base Rate \$	Supplementary Payment \$	Weekly Rate \$
(a) Shipwright	393.50	5.90	399.40
(b) Ship's carpenter and/or joiner, or painter (tradesman)	393.50	5.90	399.40
(c) Employee docking and undocking vessels, cleaning, chipping, scraping, painting, coating with oils or composition, cement washing, or repairing docks or slips	275.60	18.30	293.90
(d) All other adults	242.30	20.40	262.70
(e) The hourly rate is 1/38th of appropriate weekly rate prescribed herein.			
(f) Dunnaging			

The minimum rate of wage that may be paid by employers to employees engaged in the dunnaging of ships during the ordinary working hours prescribed in subclause (a), Clause 18 (Hours), hereof shall be \$13.0292 per hour.

This rate is calculated as one thirty-eighth of the sum of the weekly wage for classification (a) hereof plus a tool allowance of \$8.30 multiplied by 52 and divided by 42.2.

The factor of 42.2 is computed taking into account pro rata entitlements to the following:

20 working days annual leave; 10 days sick leave; 11 days public holidays; 8 days for following the job.

In addition to the hourly rate prescribed herein a disability payment of 36 cents per hour shall be made for each hour worked; together with an amount for annual leave loading equivalent 1/38 of the minimum wage prescribed in subclause 3 (Minimum Wage) hereof for each hour worked.

(g) Leading Hands

- (i) If in charge of 2 to 8 employees, shall be paid 35 cents per hour extra.
- (ii) If in charge of more than 8 employees, 58 cents per hour extra.

2. APPRENTICES

The minimum weekly rates that may be paid to apprentices shall be the undermentioned percentages of the wage applicable to classification (a), subclause 1 (Wages) hereof.

	Percentage of Total Wage (\$399.40)	Amount per Week \$
Four-year term		
First year	38	151.80
Second year	55	219.70
Third year	75	299.60
Fourth year	90	359.50

Wage rates for apprentices shall be adjusted to the nearest 10 cents. In addition to the rate prescribed herein there shall be added a tool allowance of \$11.50 per week which sum shall not be taken into account in the computation of overtime or any other penalty rates.

An employer who provides an apprentice with a kit of tools may deduct from the wages of the apprentice the tool allowance of \$11.50 per week until such time as the employer is reimbursed the cost of the tools. In the event of an apprentice being dismissed or leaving the employment before the cost of the tools has been reimbursed, the employer shall be entitled to deduct from any moneys owing to the apprentice the amount then owing or to retain such tools as will equal the value then owing.

Tools so provided shall be kept at the employer's establishment during the usual hours of work.

3. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 (Wages) hereof, no adult employee shall be paid less than the rate of \$257.40 per week.
- (b) Provided that payments for overtime, special rates, weekend penalties, holiday work, shift allowances, and disability allowances prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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

DIVISION B - CLERKS

1. WAGES

- (i) Adults

Except as prescribed in subclause (iii) hereof, adult employees of a classification hereunder mentioned shall be paid the amount assigned opposite that classification.

	Amount per Week \$
1. 1st year's adult experience	310.90
2nd year's adult experience	332.60
3rd year's adult experience	360.90
2. An accountant or chief clerk wholly responsible for the office work and who prepares the balance sheet and profit and loss account	479.90
3. A clerk who is in charge of and responsible for the work of -	
(a) 5 or more employees	426.50
(b) 3 or 4 employees	410.10
(c) 2 employees	399.20

'Employees' in this subsection shall mean any clerk, typist or stenographer and shall include the clerk-in-charge.

(ii) Juniors

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

	Percentage of Second Year Adult Rate %	Amount per Week \$
Under 16 years of age	40	133.00
16 to 17 years of age	45	149.70
17 to 18 years of age	55	182.90
18 to 19 years of age	70	232.80
19 to 20 years of age	80	266.10
20 to 21 years of age	90	299.30

(iii) Proviso

When determining the amount 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.

(iv) 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 1(ii) 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.

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

(v) Additional Payments

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

	Amount \$
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	2.10
20 to 21 years of age	2.20
21 years of age and over	2.80

CONDITIONS FOR EMPLOYEES IN DIVISION A

9. AMENITIES

Employers shall provide amenities in accordance with those prescribed in the Industrial Safety, Health and Welfare Act 1977, and the Regulations made thereto.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to employees (other than casual employees and dunnagers) after 12 months' continuous service (less the period of annual leave).

(b) Method of Taking Leave

(i) Time of Taking Leave

Annual leave shall be given at a time agreed between the employee and the employer within a period not exceeding six months from the date when the right to annual leave accrued.

(ii) Either 28 consecutive days, or two separate periods of not less than 7 consecutive days in all cases exclusive of any public holidays occurring therein the right to annual leave accrued.

(iii) Provided further that by agreement between the employer and employee leave may be taken in any other combination.

(iv) Where an employee requests that leave be allowed in one continuous period such request shall not be unreasonably refused. In the event of lack of agreement between the parties the matter shall be referred to the Tasmanian Industrial Commission.

(v) In the circumstances where a public holiday falls within one day of the weekend or another public holiday the provisions of subclause (b)(iii) of this clause may be altered by agreement between the employer and a majority of employees affected under this award to provide that a day of annual leave entitlement may be granted on the day between the said public holiday and/or weekend if an employee, or employer, requests it.

(c) Leave Allowed Before Due Date

- (i) An employer may allow an employee to take his annual leave prior to the employee's right thereto having accrued due. In such circumstances the qualifying period of further annual leave shall not commence until the expiration of the 12 months in respect of which the leave so allowed was taken.
- (ii) Where an employer has allowed an employee to take his annual leave pursuant to subclause (a) of this clause and the employee leaves or is terminated (by whatsoever cause) prior to the employee completing the 12 months' continuous service for which leave was allowed in advance, the employer may for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/52nd of the amount of wages paid on account of the annual leave.

(d) Proportionate Leave on Termination

Where an employee has given 5 working days or more continuous service, inclusive of any day off as prescribed by Clause 18 (Hours) or Clause 32 (Shift Work), subclause (d) of this award (excluding overtime), and he either leaves his employment or his employment is terminated by the employer he shall be paid 1/12th of an ordinary week's wages in respect of each completed 5 working days of continuous service with his current employer for which leave has not been granted or paid for in accordance with this award.

(e) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous notwithstanding an employee's absence from work for any of the following reasons:

- (i) illness or accident up to a maximum of 4 weeks after the expiration of paid sick leave;
- (ii) bereavement leave;
- (iii) jury service;
- (iv) injury or illness received during the course of employment and up to a maximum of 91 days for which the employee received workers' compensation;

- (v) long service leave;
- (vi) where an employee is called as a witness on behalf of Commonwealth or State;
- (vii) leave of absence not exceeding three months which has been granted where the employer is satisfied that the employee's absence is the direct result of war service;
- (viii) any reason satisfactory to the employer or in the event of dispute to the Tasmanian Industrial Commission. Provided that the reason shall not be deemed satisfactory unless the employee has informed the employer within 24 hours of the time when he was due to attend for work or as soon as practicable thereafter of the reason for the absence and probably duration thereof.

(f) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees shall be paid an amount equivalent to the minimum wage as prescribed in subclause 3 (Minimum Wage), Division A, Clause 8 (Wage Rates).

(g) Commencement of Leave - Distant Jobs

Where an employee is working at a location remote from the normal place when scheduled to commence leave the employee shall be allowed one day for travel before such leave commences.

(e) Payment in Lieu Prohibited

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

11. BEREAVEMENT LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

12. COMMITMENTS

(a) Structural Efficiency Exercise

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

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 employee's substantive classification for performing work of a lower classification.

- (ii) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (iii) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry and to enhance the career opportunities and job security of employees in the industry.
- (iv) Measures raised for consideration shall be related to implementation of a new classification structure and/or other relevant matters.
- (v) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility within an enterprise shall be implemented subject to the agreement of the parties to this award and subject to the following requirements:
 - (1) the parties will consider the implications of the proposed measures for existing arrangements;

- (2) the majority of employees affected by the change at the enterprise must genuinely agree to the change;
 - (3) no employee shall lose income as a result of the change;
 - (4) any agreement which affects a provision of this award shall be subject to approval by the Tasmanian Industrial Commission.
- (vi) Award restructuring shall be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (vii) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
- (1) developing a more highly skilled workforce;
 - (2) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (3) removing barriers to the utilisation of skills acquired.
- (viii) Any dispute arising in relation to the implementation of this clause shall be subject to the provisions of Clause 31 (Settlement of Disputes).

(b) Award Modernisation

- (i) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- (ii) The parties commit themselves to the following principles as part of the structural efficiency process and have agreed to participate in testing a new classification structure.

- (1) Acceptance in principle that new award skill level definitions will be more suitable for the needs of the industry, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the tasks now performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
 - (2) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
 - (3) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputation.
- (iii) The parties agree that the working party will continue to meet the aim of modernising the award.

13. DISABILITY ALLOWANCE

In addition to the wage rates prescribed in Clause 8 (Wage Rates) and allowances prescribed in Clause 34 (Special Rates) hereof, employees other than dunnagers engaged on work in ship and boat yards and on ship repairs shall be paid an amount of \$13.70 per week of 38 hours. Where a greater or lesser number of hours are worked in a week and for casuals payment shall be made pro rata to the rate herein prescribed.

14. DISTANT JOBS

Employees engaged on distant jobs (i.e., a job that necessitates an employee being unable to return home at night) shall be provided with all travelling expenses, accommodation and meals, together with an allowance of \$2.90 per day.

15. FIRST AID CERTIFICATE ALLOWANCE

An employee who is the holder of a current Red Cross Society, St John Ambulance or other recognised first aid certificate, shall, if required to act as a first aid attendant, be paid \$1.52 per day extra.

16. FIRST AID EQUIPMENT

The employer shall provide and maintain first aid equipment in conformity with the standards prescribed in the Industrial Safety, Health and Welfare Act 1977.

PROVIDED that in the case of employees required to work away from the employer's fixed work place the employer shall provide to each work group a fully maintained first aid kit.

17. HOLIDAYS WITH PAY

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

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Eight Hours' 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, or such other days as may be observed in the locality in lieu of any of the said days.

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

- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed in subclause (c) of Clause 25 (Overtime) of this award.

18. HOURS

- (a) The ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:

- (i) 7 hours 36 minutes per day, or
- (ii) 8 hours per day on nine days and 4 hours on one day per fortnight, or
- (iii) 8 hours per day on nineteen days with a rostered day off, or
- (iv) 8 hours per day with an accumulation of rostered days off up to a maximum of two days.
- (v) Such other method agreed between the employer and the majority of employees.

The actual method of implementation shall be determined by mutual agreement between the majority of employees and the employer, utilising one of the above methods.

- (b) The maximum number of ordinary hours per week in respect of which the wage rates fixed by the award shall be paid shall be an average 38 to be worked in five days of consecutive hours (excluding meal breaks) between the hours of 6.00am and 6.00pm, Monday to Friday inclusive.
- (c) The hours of work prescribed by this clause shall, excepting for a meal break of not less than 45 minutes nor more than 60 minutes, be continuous on each day. Such meal break to be taken between the hours of 11.00am and 3.00pm.

PROVIDED that where there is an agreement between the employer and the employee, the meal break may be reduced to 30 minutes.
- (d) Except where overtime is worked for a period not exceeding 1 hour after normal finishing time, no employee shall work for more than 5 hours without a break of not less than 30 minutes for a meal.
- (e) The employer and the majority of employees may agree that the ordinary working hours are to exceed 8 (up to a maximum of 10) on any day, thus enabling a week day off to be taken more frequently than would otherwise apply.
- (f) If an RDO is to be substituted, 3 days notice (except in emergencies) shall be given to the employee and a day off in lieu at the ordinary rates at a mutually agreeable time.

In circumstances whereby a system of RDO's apply, an employer with the agreement of the employee, may in an emergency situation, substitute the day an employee is to take off for another day.

PROVIDED that such agreement will not be unreasonably withheld.

- (g) If an employee is required to work on an RDO and no day in lieu is granted, the employee is to be paid at overtime rates for the hours worked paid for the RDO.

19. JOB STEWARD

An employee appointed as a job steward shall upon notification by the union to the employer be recognised as the accredited representative of the union to which he belongs and he shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he represents.

20. JURY SERVICE

An employee required to attend for jury service shall be entitled to have his pay made up by the employer to equal his ordinary pay (inclusive of any accrual entitlements prescribed by Clause 18 (Hours) or Clause 32 (Shift Work), subclause (d) of this award) whilst meeting this requirement. The employee shall give his employer proof of such attendance and the amount received in respect of such jury service.

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 purpose 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.

(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, but 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
 - (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 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.

(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.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) **PROVIDED** that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

22. MINIMUM PERIOD OF ENGAGEMENT - DUNNAGING ONLY

An employee who is engaged for work shall, if he presents himself at the job, be entitled to a minimum payment as for 4 hours' work at the appropriate rate.

23. MISCELLANEOUS

Grinding Tools

The employer shall provide a suitable grinding stone on every job for the use of employees, with machine or hand power for turning same.

Damage to Clothing or Tools

In the event of employees, whilst in the service of an employer, having their clothing or tools spoilt by acid, sulphur or other deleterious substance, they shall be recompensed for such loss by the employer.

Lock-up for Tools

Employers shall provide, wherever possible, or arrange for, a suitable weatherproof place or lockup in which to store employees' tools.

Bundy Clock etc.

Where Bundy clocks or checks are in use, and where such are rung off during lunch hour, such ringing-off and on shall be done in the employer's time.

24. NOTICE OF DISMISSAL (DUNNAGING)

If an employee, not having been notified at or before 5.15pm or 2 hours before knocking-off time on any day that he will not be required on the following day, presents himself for work on such following day, he shall be entitled to a minimum payment as for 4 hours at the appropriate rate for such day, except in a case where his not being required for work is due to a breakdown of machinery or other circumstances over which the employer has no control.

25. OVERTIME

- (a) All time worked outside the hours specified in Clause 18 (Hours) hereof, or for work performed in excess of 8 consecutive hours in each day (excluding meal breaks) shall be paid for at the rate of time and one half for the first 2 hours and double time thereafter; such double time to continue until completion of shift.
- (b) For employees engaged on dunnaging all overtime shall be at the rate of double time.
- (c) For all work performed on any of the holidays mentioned in Clause 17 (Holidays with Pay) hereof, payment shall be made at the rate of two and one half times the ordinary rate.
- (d) In the event of an employee working for 24 consecutive hours he shall not be employed during the next 24 hours provided that they shall be paid for any ordinary time falling during that 24 hour period.
- (e) No employee shall work more than 24 hours overtime in any one week. For the purposes of this subclause, Saturday and Sunday shall not be regarded as part of the week and a further period of 24 hours overtime may be worked during such days. In exceptional cases, additional overtime may be worked by agreement between the employer and the employees.

(f) Any employee who, having worked during the ordinary working hours on any day or shift is called upon to continue work in overtime, without having received on the previous day or shift, notice thereof, shall be paid an allowance of \$4.90 per meal or shall be supplied by the employer with a reasonable meal in lieu of such payment.

(g) No employee shall be required to work more than 5 hours without a break for a meal.

(h) Penalty rates for overtime shall be calculated on the ordinary rate of wage.

PROVIDED that for dunnagers overtime is calculated at double the ordinary time rate for a shipwright.

(i) Apprentices shall not be required to work during other than ordinary hours nor on any holidays without their consent.

(j) An employee working overtime shall be allowed a crib time of 30 minutes without deduction of pay after each 4 hours of overtime worked, if the employee continues work after such crib time.

Unless the period of overtime is one and a half hours or less, an employee before starting overtime after working a full ordinary shift shall be allowed a meal break of 30 minutes, which shall be paid for at ordinary rates. If a meal break is not taken and overtime exceeds one and one half hours, a paid meal break of 30 minutes shall be taken before continuing and the first break paid for at ordinary rates. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the employee shall not be required to make any payment in respect of any time allowed in excess of 30 minutes.

(k) When overtime work is necessary it shall whenever reasonably practicable, be so arranged that employees have at least 9 consecutive hours off duty between the work of successive days.

An employee who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least 9 consecutive hours off duty between those times shall, subject to this subclause be released after completion of such overtime until he has had 9 consecutive hours off duty and shall be paid for the ordinary working hours that fall during such rest period.

If on the instructions of the employer such an employee resumes or continues work without having had such 9 consecutive hours off duty the employee shall be paid at double rates until the employee is released from duty for such period, and the employee shall then be entitled to be absent until the employee has had 9 consecutive hours off duty and be paid for ordinary working hours falling during such rest period.

- (1) In the event of any dispute arising from the implementation of the provisions of this clause, the matter shall be referred to the Tasmanian Industrial Commission and any decision shall be final and binding on all parties.

26. PAYMENT OF WAGES

(a) Pay Day and Methods

- (i) On the first pay day occurring during his employment, an employee shall be paid the wages that are due to him up to the completion of his work on the previous day.
- (ii) All wages, allowances and other moneys due shall be paid weekly and no later than Wednesday each week by cash, or where the employer and the majority of employees and the relevant unions at an establishment agree, by electronic funds transfer, this shall be at no cost to the employee, up to a maximum of 2 transactions per week including the original.
- (iii) Where electronic/direct banking is agreed the employees may elect to have their monies deposited into two accounts.
- (iv) An existing employee who believes genuine hardship will be incurred may make application for exemption. Where this occurs, the employer and the appropriate union will confer with the intent to resolving the hardship or agreeing to other arrangements.
- (v) Waiting Time Penalties

An employee kept waiting for his wages on pay day for more than a quarter of an hour after the usual time for ceasing work shall be paid at overtime rates after that quarter of an hour, with a minimum of a quarter of an hour until wages are paid in full. This applies to all methods of payment of wages.

(vi) Employer Responsibility

It is the responsibility of the employer to have the details of payment of wages, account number(s) and moneys to cover wages by either EFT or Direct Deposit to the appropriate financial institution to enable payment as per this clause regardless of the method used by transferring of such details from pay office to financial institution.

(vii) **PROVIDED** that in any week in which a holiday falls on a Friday wages accrued shall be paid on the previous Wednesday and provided further that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.

(viii) The employer shall not keep more than 2 days' wages in hand.

(b) Pay Packet Details

Particulars of details of payment to each employee shall be included in the envelope including the payment, or in a statement handed to the employees at the time payment is made and shall contain the following information:

- (i) date of payment;
- (ii) period covered by such payment;
- (iii) the amount of wages paid for work at ordinary rates;
- (iv) the number of hours paid at overtime rates and the amount paid therefor;
- (v) the amount of allowances or special rates paid and the nature thereof;
- (vi) the gross amount of wages and allowances paid;
- (vii) the amount of each deduction made and the nature thereof;
- (viii) the net amount of wages and allowances paid;
- (ix) any annual holiday payments;
- (x) superannuation.

(c) Payment on Termination

All wages, allowances and other moneys due shall be paid in full no later than cessation of work on the final day of work.

(d) Employee Terminating

Where an employee gives notice in accordance with Clause 36 (Termination of Employment) of this award, and moneys due are not paid on termination, the employer shall have 2 working days to send moneys due by registered post provided that if the moneys are not posted within that time then time spent waiting beyond the 2 working days shall be paid for at ordinary rates, such payment to be at the rate of 8 hours per day up to a week's pay when the right to waiting time shall terminate.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

(e) Employer Terminating - Daily Penalties

Where an employer gives notice in accordance with Clause 36 (Termination of Employment) of this award, all moneys due shall be paid at termination; where this is not practicable the employer shall forward the moneys due by registered post within 2 working days of termination and shall pay waiting time up to the time of posting at the rate of 8 hours ordinary time per day up to a maximum of one week's pay.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

27. POSTING OF AWARD

A copy of this award, with all variations thereof, shall be posted and kept posted by the employer in a prominent place on the employer's premises accessible to the employees.

28. POSTING OF NOTICE

An employer shall not prevent an official of the union authorised in writing in that behalf, from posting on an employer's premises or job a copy of any official notice of the union provided such notice is of reasonable size.

29. RIGHT OF ENTRY

- (a) One official of each union will have the right of entry to any place where work is being carried out within the scope of this award during working hours provided he applies to the foreman for permission to enter (and this permission shall not be reasonably withheld).

- (b) The purpose of entry shall be confined to interviewing any members of the union employed thereon or any employee following the particular calling the union official is representing.
- (c) Meetings of employees will only be held at meal breaks and not during working hours.
- (d) If an employer alleges that an official is unduly interfering with the work of the job or is causing dissatisfaction among the employees thereon or is offensive in his manner, or is committing a breach of any of the conditions set out in this clause such employer may refuse to allow the official to enter into or to remain on the place, but the official shall have the right to bring such refusal to the attention of the Tasmanian Industrial Commission who will arbitrate on the dispute.

30. SATURDAY AND SUNDAY WORK

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

31. SETTLEMENT OF DISPUTES

- (a) Where an employee has submitted a request concerning any matter directly connected with his employment to a foreman or a more senior representative of management and that request has been refused, the employee may if he so desires, ask the union delegate to submit the matter to management, and the matter may then be submitted by the union delegate to the appropriate representative of the employer concerned.
- (b) If not settled at this stage, the matter may be formally submitted by the Secretary of the union to the employer.
- (c) If not settled at this stage, the matter may be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of an association of employers as the employer may desire.
- (d) If the matter is still not settled, it may be submitted to the Tasmanian Industrial Commission.
- (e) Where the above procedures are being followed, work shall continue normally. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

32. SHIFT WORK

Where shifts are worked, not less than 3 successive working afternoons or nights on shift shall constitute shift work and shall be paid for at the rate of time and a half for the first 8 hours and double time thereafter until the employee ceases work.

33. 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) an employee shall not be entitled to such leave of absence of 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;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of 10 days of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) of this subclause, an employer may, within one month of this award coming into operation or within two weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave, shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.

- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

34. SPECIAL RATES

In addition to the rates prescribed in Clause 8 (Wage Rates) the following special allowances shall be paid, but such extra rates shall not be subject to penalty rates for overtime, Sunday or holiday pay, or shift work:

- (a) Wet places, i.e. any place where an employee's clothing or boots unavoidably become saturated, 30 cents per hour.

PROVIDED that this extra rate shall not be payable to an employee who is provided by the employer with suitable protective clothing and/or footwear and provided further that any employee who becomes entitled to his extra rate shall be paid such extra rate for such part of the day or shift as he is required to work in wet clothing or boots.

- (b) Confined spaces, i.e., a small compartment or place to which access is through a manhole or similar opening or when work is done in a stooping or otherwise cramped or uncomfortable position, 38 cents per hour extra whilst so engaged, provided that when a ship's hold is plugged and entry is through the Booby Hatch, an amount of 38 cents per hour shall be paid to employees for work performed in ships' holds and decks, or when "black" hatches are required to be worked on all decks.

- (c) (i) Dirty Work - Employees who are required to work on repairs in smoke boxes, uptake, funnel, flue, furnace, or combustion chambers of boilers or on machine sanders or in oil tanks, previously used dunnage or who are required to handle insulwool or on work which the management agrees is of an unusually dirty or offensive nature, shall be paid 30 cents per hour extra.

- (ii) Acid Work - Employees who are required to work in acid tanks or inside acid retorts shall be paid 79 cents per hour extra.

- (d) Employees who in the course of their employment are required to handle silicate of cotton, coal, dust, slag, wool, alfol, charcoal, fibreglass, pumice, lamp black, calcine, pitch-blend, pipe clay, soda ash, or in the laying of corticene involving the fixing of it to decks by the use of tallow and resin solution or other adhesive medium, shall be paid 30 cents per hour extra.

- (e) Employees working amongst frozen cargo or in temperatures of less than 2.2 degrees Celsius (in freezing room) shall be paid an additional amount of 27 cents per hour extra.
- (f) Where the circumstances arise wherein a class of employee mentioned in this division of the award is required to perform work of a like nature or under the same conditions as other classes of waterfront employees and a special rate for such work has been determined by the Australian Industrial Relations Commission or Board of Reference, the extension of such payment shall be made to employees mentioned in this award by application to the Tasmanian Industrial Commission. In the event of a dispute arising in relation to the provisions of this subclause, the matter may be referred to the Tasmanian Industrial Commission for adjudication and the decision thereon shall be final and binding.
- (g) Rates prescribed in this clause are not cumulative, and where an employee is engaged on work for which more than one special rate is prescribed, the employee shall be entitled to only one, i.e., the highest, for the disabilities so prevailing.

35. SUPERANNUATION

(a) Definitions

'Employee' shall mean employee engaged in a classification contained in Clause 8 (Wage Rates).

'Fund' shall mean either TASPLAN or the Superannuation Trust of Australia (STA) scheme established by Trust Deed.

'Approved fund' shall be a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

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

(b) Employer Contributions

- (i) An employer shall make a contribution equivalent to 3% per week of ordinary time earnings to the fund (as defined) as from the first full pay period to commence on or after 23 September 1991.

Contributions payable in accordance with this clause shall be paid from commencement of employment.

Contributions shall continue to be made where an employee is absent from his employment on leave allowed by this award or under any Act or Regulation.

Such contributions shall be forwarded on a monthly basis to the Trustees of TASPLAN or STA or other exempted funds.

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) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in paragraph (b)(i) of this clause paid into the fund known as CIS Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(c) Employee Contributions

An employee may elect to make contributions to the fund (as defined) of any amount of his choosing. The amount so contributed shall be applied to the employee's accumulation account.

(d) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into the fund (as defined) in the following circumstances:

- (i) where employees subject to this award represent a minority of the total employees of an enterprise and contributions are being made into an approved fund (as defined) in respect of the majority of employees in that enterprise; or
- (ii) where the fund subject to the exemption application is an approved fund which was established prior to 1 August 1991 and occupational superannuation equivalent to 3% of ordinary time earnings was being paid on behalf of all employees in the establishment covered by this award prior to 2 August 1991 and has continued to be paid since that date; or
- (iii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or STA.

(e) Procedure for Seeking Exemption

- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 30 September 1991 for hearing and determination.

Such application shall contain the following information:

- (1) Name and fund into which the contributions are to be paid.
 - (2) Evidence of the fund's compliance with Commonwealth Operational Standards.
 - (3) Summary of structure of benefits.
 - (4) Level of Administration Charge.
 - (5) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 2 August 1991 may make application for exemption in accordance with subclause (b) of this clause. Such application shall be made within one month of the commencement of operation of the new business provided that this shall not apply to a business which has been subject to this award as at 23 September 1991.

(f) Record of Contributions

The employer shall keep a record of all contributions paid for each employee in accordance with this clause and such record shall form part of the records required to be kept under Section 75 of the Industrial Relations Act 1984.

An employer shall not be required to make contributions during any periods of unpaid leave and shall be entitled to make a pro rata deduction for any period in any week where an employee is absent from employment without authorisation from the employer.

36. TERMINATION OF EMPLOYMENT

- (a) In the case of employees engaged by the week the following provisions shall apply:
- (i) Subject to the provisions of paragraph (ii) hereof a week's notice of the termination of engagement shall be given by either side or one week's wages shall be paid or forfeited in lieu thereof. Notice may be given on any day during the week to terminate the engagement whether on the corresponding day of the following week, or on any later day of the following week.
 - (ii) The employer may dismiss any employee summarily without notice for malingering, idling, inefficiency, neglect of duty including going slow, or misconduct, whereupon he shall pay the employee's wages up to the time of dismissal.
- (b) In the case of employees engaged for dunnaging or as casuals, one hour's notice of the termination of the engagement shall be given on either side or one hour's pay shall be paid or forfeited in lieu thereof. In the case of the notice being given by the employer, such hour shall be allowed to the employee to gather, clean, pack and transport his tools to this home.

37. TOOLS

Employees shall provide all hand tools including auger bits up to 1-inch diameter and twist drills up to 1/2-inch diameter and shall be paid a tool allowance of \$11.50 per week which sum shall not be taken into account in the computation of overtime and other penalty rates.

38. TRAVELLING TIME

- (a) When an employee is required to work at a place other than his usual place of work he shall be paid his ordinary rate of wage for all time reasonably occupied in travelling to and from the place at which he is so required to work in excess of the time ordinarily occupied in travelling to and from his usual place of work. All fares necessarily incurred in so doing shall be paid by the employer.

- (b) When an employee is required to work beyond a time when public transport is available, the employer shall be required to provide transport, or meet the cost of transport to the employee travelling to his home. Where an employee uses his own means of transport, he shall be paid a distance allowance of 27.5 cents per kilometre travelled on his return to home by the most direct road route.
- (c) Where an employee is required to work at a distance of 40 kilometres or more away from the headquarters of the employer and his work concludes on or after 10.00pm, the employer shall reimburse the employee for expenses incurred in meeting the cost of overnight accommodation.

CONDITIONS FOR EMPLOYEES IN DIVISION B

39. ANNUAL LEAVE

(a) Period of Leave

A period of 152 hours paid leave shall be allowed annually to an employee after 12 months' continuous service on weekly hiring (less the period of annual leave).

(b) Broken Leave

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

- (i) in two separate periods, the lesser of which shall not be less than 7 consecutive days; i.e. 5 working days;
- (ii) in any combination provided one period shall not be less than 7 consecutive days; i.e. 5 working days.

(c) Leave to be Exclusive of Public Holidays

If any of the holidays prescribed in Clause 43 (Holidays with Pay) falls within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that leave 1 day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

Except as provided in subclause (h), payments shall not be made or accepted in lieu of annual leave.

(e) Time of Taking Leave

Subject to the provisions of subclause (g) annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(f) Payment for Period of Leave

- (i) All employees, before going on leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.
- (ii) In addition thereto, all employees shall be paid an amount equivalent to the minimum wage as prescribed in subclause 3 (Minimum Wage), Division A, Clause 8 (Wage Rates).

(g) Leave Allowed before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed by Clause 43 (Holidays with Pay).

(h) Proportionate Leave on Ending Service

If, after one completed month of 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 as follows:

12.67 hours of each completed month of continuous service in respect of which leave has not been granted.

(i) Calculation of Continuous Service

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

- (i) leave of absence where the employee is called as a witness on behalf of the Commonwealth or State;
- (ii) service on a jury;
- (iii) leave of absence not exceeding three months which has been granted where the employer is satisfied that the employee's absence is the direct result of war service;
- (iv) any absence from work on account of personal sickness or accident.

Any such absence as aforesaid shall not, except to the extent of not more than 91 days in any 12 month period, be taken into account in calculating the period of 12 months' continuous service.

40. ENTERPRISE AGREEMENTS

- (a) Notwithstanding anything contained in this award but subject to the provisions of this clause, an enterprise agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An 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 shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union must be a party to the agreement.
 - (v) The relevant union shall not unreasonably oppose any agreement.

- (c) An enterprise agreement shall be signed by the parties, being the employer and the union, 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.

41. ESTIMATING SERVICE

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.

42. GENERAL CONDITIONS

The following clauses in Division A hereof, shall also apply:

- 11. Bereavement Leave
- 21. Maternity Leave
- 29. Right of Entry

43. HOLIDAYS WITH PAY

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

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

- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed in Clause 53 (Sunday and Holiday Work) of this award.

44. HOURS

- (a) The ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:
 - (i) 7 hours 3) minutes per day, or
 - (ii) 8 hours per day on four days and 6 hours on one day each week, or
 - (iii) 8 hours per day on nine days and 4 hours on one day each fortnight, or
 - (iv) 8 hours per day on nineteen days with an accumulated rostered day off, or
 - (v) 8 hours per day with an accumulation of rostered days off up to a maximum of five days.

The method of implementation shall be determined by mutual agreement between the majority of employees and the employer, utilising one of the above.

- (b) The maximum number of ordinary hours per week in respect of which the wage rates fixed by the award shall be paid shall be 38 to be worked in five days of consecutive hours (excluding meal breaks) between the hours of 7.00am and 6.00pm, Monday to Friday inclusive.
- (c) The hours of work prescribed by this clause shall, excepting for a meal break of not less than 45 minutes nor more than 60 minutes, be continuous on each day. Such meal break to be taken between the hours of 11.00am and 3.00pm.

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

- (d) Except where overtime is worked for a period not exceeding 1 hour after normal finishing time, no employee shall work for more than 5 hours without a break of not less than 45 minutes for a meal.

(e) The employer and the majority of employees may agree that the ordinary working hours are to exceed 8 (up to a maximum of 10) on any day, thus enabling a week day off to be taken more frequently than would otherwise apply.

(f) If an RDO is to be substituted, three days notice (except in emergencies) shall be given to the employee and a day off in lieu at the ordinary rates at a mutually agreeable time.

In circumstances whereby a system of RDO's apply, an employer with the agreement of the employee, may in an emergency situation, substitute the day an employee is to take off for another day.

PROVIDED that such agreement will not be unreasonably withheld.

(g) If an employee is required to work on an RDO and no day in lieu is granted, the employee is to be paid at the rate of double time for hours worked.

45. MIXED FUNCTIONS

(a) An employee engaged for half or more than half of one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such a day. If for less than half of one day, he shall be paid the higher rate for the time so worked.

(b) Provided that an employee shall not be entitled to be paid at the higher rate for relieving an employee who is absent on a rostered day off, unless such relief extends beyond one working day where an employee takes accumulated rostered days off.

46. OCCUPATIONAL SUPERANNUATION

(a) Contribution

(i) An employer shall make a contribution equivalent to 3% of ordinary time earnings (as defined) into an approved superannuation fund in respect of all eligible employees (as defined) as from 15 August 1990.

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) Notwithstanding anything elsewhere contained in this clause, an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as CIS Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

'Approved Fund' shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'Eligible Employee' shall mean an employee who has had three months continuous service with an employer subject to this award. **PROVIDED** that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this award.

Membership of the scheme shall be from the date of commencement of employment with that employer.

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

(c) Fund

Contributions determined in accordance with subclause (a) of this clause shall, subject to subclause (e) of this clause, be made into TASPLAN.

(d) Exemptions

An employer may seek exemption from making contributions into the nominated approved fund in the following circumstances:

- (i) where employees subject to this award represent a minority of the total employees and contributions are already being made into an approved fund (as defined) in respect of the majority of employees in any one establishment; or

- (ii) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 1 January 1990 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of all employees in the establishment covered by this division prior to 1 January 1990 and have continued to be paid since that date; or
 - (iii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN.
- (e) Procedure for Seeking Exemption
- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 7 August 1990 for hearing and determination.
- Such application shall contain the following information:
- (1) Name of Fund into which the funds are to be paid.
 - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
 - (3) Summary of structure and benefits.
 - (4) Level of administration charge.
 - (5) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union party to the award which has constitutional coverage for the class of employee affected. Where the union agrees with the application, the exemption will be granted.
 - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission. In such circumstances and in accordance with Section 28 of the Act, the employer concerned may be represented in person by an agent (other than a legal practitioner) or by a registered employer organisation.

- (iv) An employer may choose to forego consideration of his application by the union and have the matter determined in the first instance by the Tasmanian Industrial Commission.
- (v) An employer who commences a new business after 15 August 1990 may make application for exemption in accordance with subclause (e) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 1 January 1990.

47. OVERTIME

- (a) For all time of duty in excess of the ordinary hours, payment shall be made at the rate of time and a half for the first two hours and double time thereafter.
- (b) Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime.

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

Agreements to implement this provision shall be in writing, signed by the employee and the employer and shall form part of the records required to be kept in accordance with Section 75 of the Industrial Relations Act 1984.

- (c) In computing overtime, each day's work shall stand alone.
- (d) For the purpose of determining overtime entitlements of an employee, any employee who works 10 minutes or more past the time fixed for ceasing work, shall be paid the overtime rate for all time worked after the time fixed for ceasing work.

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

48. PAYMENT OF WAGES

- (a) Wages shall be paid weekly during the employer's time, not later than Wednesday in each week. Payment of wages shall be by cheque, cash or by electronic funds transfer into an employee's nominated account at a bank, building society or credit union of the employees choice.

- (b) Where the employer utilises EFT as a method of payment of wages, the employer shall be responsible for meeting the cost of one deposit into and one withdrawal from an employee's account each pay period.
- (c) By agreement between an employer and the majority of employees wages may be paid fortnightly instead of weekly.

Without mutual agreement, the employer must give not less than one month's notice of change.

- (d) On the completion of the first full pay period and when any change is made in the weekly rate, the employee shall be notified in writing of the amount of wages to which he is entitled, the amount of deduction made therefrom and the net amount being paid to him.

PROVIDED ALWAYS that such notification shall be given not less often than once in each year of service.

49. SATURDAY WORK

- (a) For all work performed on Saturday, payment shall be made at the rate of double time.
- (b) No rest period shall apply on Saturdays, if time worked is less than 4 hours.

50. SETTLEMENT OF DISPUTES

The following procedure shall be observed in the resolution of grievances and in the settling of disputes.

- (a) In the event of a grievance or dispute arising, the matter should first be discussed between the employee/s concerned and their immediate supervisor.
- (b) Should the grievance or dispute not be settled by the discussion referred to in subclause (a) the shop steward shall take the matter up with the employer.
- (c) Should the matter remain unresolved, the shop steward shall notify the State Secretary of the union. A conference on the matter shall then be arranged between the union and the appropriate management representatives including, if desired, a representative of an employer organisation.

- (d) If the conference referred to in subclause (c) hereof is unable to satisfactorily resolve the dispute, the matter shall be referred to the Tasmanian Industrial Commission whose decision shall be final and binding on both parties.
- (e) Without prejudice to either party, work shall continue in accordance with the award while matters in dispute between them are being processed in accordance with the preceding procedure.
- (f) Where a bona fide safety issue is involved, the parties shall give immediate priority to resolving the issue.

In resolving the issue, the parties shall have regard to and recognise safety standards and any relevant legislation.

51. SICK LEAVE

- (a) An 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 the following conditions and limitations:
 - (i) he shall not be entitled to such leave of absence of any period in respect of which he is entitled to worker's compensation.
 - (ii) he shall, as soon as possible and where practicable before 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.
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed.
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of 76 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 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 two weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave, shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

52. STRUCTURAL EFFICIENCY

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

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

53. SUNDAY AND HOLIDAY WORK

For all work performed on Sunday or on any of the holidays mentioned in Clause 43 (Holidays with Pay) hereof, payment shall be made at the rate of double time.

54. TERMINATION OF SERVICE

- (a) One week's notice shall be given by either side to terminate the contract of service. In lieu of such notice the employer shall pay one week's wages or the employee shall forfeit one week's wages as the case may be.
- (b) Employment may be terminated, during the first two weeks of employment, by one day's notice by either side.

55. TRAINEE CLERK (AS DEFINED)

- (a) Trainee Clerk (as defined) shall be engaged for a period of twelve months as a full time employee, provided that a trainee shall be subject to a satisfactory probation period of up to one month.
- (b) Where possible traineeship positions should be additional to normal staff numbers provided that no existing weekly employees shall be displaced by a trainee.
- (c) A trainee clerk (as defined) will receive on-the-job training by the employer as specified in the training agreement (as defined) and off-the-job training will be provided by a training institution/organisation approved by the Training Authority of Tasmania.
- (d) The employer agrees that the overall training program will be monitored by officers of the Training Authority of Tasmania and training record books may be used as part of this monitoring process.
- (e) Time spent off-the-job training shall be allowed without loss of continuity of employment.
- (f) Where an employer continues the employment of a trainee clerk (as defined) after completion of the "traineeship period", such "traineeship period" shall be counted as service for the purpose of the award.

- (g) Under normal circumstances overtime shall not be worked by trainees. However, when during a training period in a particular section, overtime is involved in the operation of that section, overtime may be worked by the trainees. Where overtime is worked the normal allowances and penalty rates shall apply.
- (h) The union shall be afforded reasonable access to trainees for the purpose of explaining the role and functions of the union.
- (i) Trainees shall not perform higher duties unless in the course of their traineeship.
- (j) Trainees shall be exempt from action in respect of industrial disputes. However the employer shall observe the provisions determined by the Training Authority of Tasmania in respect of the use of trainee clerks (as defined) in the time of industrial disputes.

