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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application for award or variation of an award

Tasmanian Trades and Labor Council
(T.3077 of 1991)

FISH, AQUACULTURE AND MARINE PRODUCTS AWARD

COMMISSIONER R J WATLING

9 December 1992

Award variation - insertion of "Parental Leave" clause in lieu of "Maternity Leave" clause

ORDER -

No. 3 of 1992
(Consolidated)

AMEND THE **FISH AQUACULTURE AND MARINE PRODUCTS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERT IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

This award shall be known as the "Fish, Aquaculture and Marine Products Award".

2. SCOPE

This award is established in respect of the industries of producing and processing fish, aquaculture and marine products, however, excludes employers falling within the scope of the Shellfish Industry Award.

3. ARRANGEMENT

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Division A - Process Attendants	
Finfish and/or Shellfish	
Division B - Sea Based Finfish	
Farm Employees	

CONDITIONS FOR EMPLOYEES IN DIVISION A PROCESS ATTENDANTS FINFISH AND/OR SHELLFISH

Allowances	9
Annual Leave	10
Clothing	11
Compassionate Leave	12
Contract of Employment	13
Enterprise Flexibility	14
First Aid	15
Holiday, Saturday, Sunday and Overtime Payments	16
Holidays with Pay	17
Hours of Work	18
Meal Allowance	19
Meal Period	20
Mixed Functions	21
No Reduction of Wages in Certain Cases	22
Notice Board	23
Parental Leave	24

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Payment of Wages	25
Piecework	26
Preference to Unionists	27
Productivity and Efficiency	28
Resolution of Disputes	29
Right of Entry	30
Safety Equipment	31
Shift Work	32
Sick Leave	33
Superannuation	34
Time and Employment Record	35
Traineeships	36
Travelling Time and Allowances	37

**CONDITIONS FOR EMPLOYEES IN DIVISION B
SEA BASED FINFISH FARM EMPLOYEES**

Allowances	38
General Conditions	39
Hours of Work	40
Preference to Unionists	41
Right of Entry	42
Superannuation	43

4. DATE OF OPERATION

This award shall come into operation on and from 1 January 1993.

5. SUPERSESSION AND SAVINGS

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

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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 organisation of employees in respect of whom award interest has been determined:
 - (i) The Australian Workers' Union, Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) The Food Preservers Union of Australia (Tasmania Branch) and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Confederation of Industries.

7. DEFINITIONS

'Can Closure Operator' means an employee capable of operating a can closure machine.

'Can Seam Controller' means an employee capable of setting up and monitoring can closure operations including can seam evaluations.

'Casual Employee' means any person who is engaged on an irregular basis to perform a range of tasks within their classification and skill level, the basis of such engagement being termination of employment at one hours notice by either the employer or employee.

Such irregular basis of employment will generally be discontinuous, but may include extended periods where the work is of a continuous nature.

'Loaded Rate' means one thirty-eighth of the weekly rate for the work performed plus 20% (i.e. loading in lieu of annual leave, sick leave and public holidays) plus an additional amount for shift penalties (i.e. either 15%, 30%, 50% or 100% as prescribed in Clause 32 - Shift Work) of one thirty-eighth of the weekly rate for the work performed.

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Example: The hourly rate for a casual Process Attendant Level 1, (weekly rate \$313.90), for working an afternoon shift (15% loading) shall be calculated as follows:

1/38th of weekly rate	= \$8.26
plus 20% of \$8.26	= 1.65
Sub Total	\$9.91
plus 15% of 1/38th of weekly rate (\$8.26)	1.24
Total	\$11.15 per hour

'Machine Operator' means an employee capable of operating single function fish processing equipment.

'Operator of Steam Raising Equipment' means an employee capable of supplying and controlling steam required for retort process and who is appropriately qualified.

'Process Attendant - Level 1'

(% Wage relativity to Process Attendant Level 4 after Minimum Rate Adjustment - 76%)

Means an employee capable of being engaged in limited production processes including sorting, grading, trimming, washing and packaging of fish and or shellfish and who is under direct supervision. A Process Attendant - Level 1 (as defined) shall proceed to Process Attendant - Level 2 (as defined) at the completion of 380 hours service with one or more employer(s) within the industry as prescribed in Clause 2 - SCOPE of this award.

'Process Attendant - Level 2'

(% Wage relativity to Process Attendant Level 4 after Minimum Rate Adjustment - 80%)

Means an employee capable of being engaged in functions as defined at Level 1 and in addition is capable of performing the following process functions:

- filleting
- weighing
- brushing of fish and or shellfish
- capable of precise grading and inspections
- draining and tailing
- chilling of fish and shellfish
- sealing, strapping and stamping of cartons
- bulk packing and machine operator (as defined)
- can closure operator

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'Process Attendant - Level 3'

(% Wage relativity to Process Attendant Level 4 after Minimum Rate Adjustment - 93%)

Means an employee capable of performing functions as defined at Level 2 and in addition includes the following:

- operator of refrigeration equipment
- fork life operator (up to and including 4500kilos)
- operator of steam raising equipment (as defined)
- single line supervisor (as defined)
- retort operator (as defined)
- can seam controller (as defined).

'Process Attendant - Level 4'

(% Wage relativity after Minimum Rate Adjustment - 100%)

Means an employee capable of performing functions as defined at Level 3 or who is capable of performing functions of routine maintenance operator (as defined) section supervisor (as defined), and includes persons who hold qualifications at a tradesperson level and who is employed in this trade.

'Retort Operator' means an employee capable of setting up and operating a retort to a scheduled process.

'Routine Maintenance Operator' means an employee capable of performing routine maintenance of plant and equipment and who in addition is capable of performing some minor fabrication work.

'Sea Based Finfish Farm Attendant - Level 1'

(% Wage Relativity to Process Attendant Level 4 after Minimum Rate Adjustment - 90%)

Means a person other than a hatchery employee, who has been employed for less than four months in the industry covered by the Scope of this award to:

- operate boats (including loading and unloading boats)
- moor pens
- wash and change nets
- move materials and equipment
- harvest fish (including bleeding)
- husband fish (including observing, separating, mortality retrieval, feeding)
- record fish farm data
- carry out general housekeeping and maintenance
- carry out basic net repairs
- may be required to perform diving duties

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'Sea Based Finfish Farm Attendant - Level 2'

(% Wage Relativity after Minimum Rate Adjustment - 101%)

Means a person other than a hatchery employee with more than four months service in the industry covered by the Scope with one or more employer who is employed on a finfish farm to:

- operate boats (including loading and unloading boats)
- moor pens
- wash and change nets
- move materials and equipment
- harvest fish (including bleeding)
- husband fish (including observing, separating, mortality retrieval, feeding)
- record fish farm data
- carry out general housekeeping and maintenance
- carry out basic net repairs
- may be required to perform diving duties

'Section Supervisor' means an employee capable of supervising a multiple of processing lines and who is directly answerable to the production supervisor.

'Show Day' means not more than one local show day observed on an employees ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which 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.

'Single Line Supervisor' means an employee capable of supervising a single processing section or table and who is directly answerable to the section supervisor.

'Trainee – Seafood Handler' means an employee 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.

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8. WAGE RATES

DIVISION A - PROCESS ATTENDANTS FINFISH AND OR SHELLFISH

1. WAGE RATES

- (a) Employees in a classification level hereunder mentioned shall be paid the weekly wage rate appearing opposite that classification.

No.	Classification	Wage Relativity	Base Rate Per Week	Supplementary Payment	Total Weekly Rate
		%	\$	\$	\$
1	Process Attendant Level 1 (as defined)	76	277.60	38.30	315.90
2	Process Attendant Level 2 (as defined)	80	292.20	36.30	328.50
3	Process Attendant Level 3 (as defined)	93	339.60	42.60	382.20
4	Process Attendant Level 4 (as defined)	100	365.20	45.90	411.10

- (b) Supplementary Payment

The amount appearing in the column headed Supplementary Payment in this clause is to be absorbed against any overaward payment being paid by an employer as from the beginning of the first full pay period on or after 15 November 1991.

DIVISION B - SEA BASED FIN FISH FARM EMPLOYEES

1. WAGE RATES

- (a) Employees in a classification level hereunder mentioned shall be paid the base rate and supplementary payment appearing opposite that classification:

No.	Classification	Wage Relativity	Base Rate Per Week	Supplementary Payment	Total Weekly Rate
		%	\$	\$	\$
1	Finfish Farm Attendant Level 1 (as defined)	90	328.70	41.00	369.70
2	Finfish Farm Attendant Level 2 (as defined)	101	368.90	46.50	415.40

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(b) Additional Payments

Finfish Farm Attendants (as defined) who are required by the employer to undertake diving duties shall, in addition to the rates prescribed in subclause (a) of this division receive an amount of \$2.50 per hour, or part thereof, where diving equipment, excluding tools are supplied by the employer. However, in instances where the employee supplies his or her own diving equipment, excluding tools, the amount shall be \$7.00 per hour or part thereof.

(c) Supplementary Payment

The amount appearing in the column headed Supplementary Payment in subclause (a) of this division is to be absorbed against any overaward payment being paid by an employer as from the beginning of the first full pay period on or after 15 November 1991.

(d) Translation Schedule

From the first full pay period on or after 15 November 1991 employees occupying classifications in the Poultry Game and Marine Products Award shall be re-classified to one of the appropriate levels as set out below:

<u>New Classification</u>	<u>Existing Classification</u> (Poultry, Game and Marine Products Award)
Level 1	New Level/Trainee
Level 2	Level 1 Process Worker
Level 3	Forklift driver Boiler Attendant Refrigeration Attendant
Level 4	Trades Level

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**CONDITIONS FOR EMPLOYEES IN DIVISION A
PROCESS ATTENDANTS FINFISH AND/OR SHELLFISH**

9. ALLOWANCES

Tool Allowance

All employees who are required to use tools shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.80 per week.

PROVIDED that such allowances shall not be subject to adjustment when computing payments for shift penalty rates, for Saturday, Sunday or holiday work, for overtime or for any other purposes.

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days leave shall be allowed annually to an employee other than a casual employee after 12 months continuous service in the service of the same employer.

(b) Time of Taking Leave

Leave allowable under this clause shall be given within three months of the date on which such leave became due or at a time mutually agreed by the employer and the employee.

(c) Payment in lieu Prohibited

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

(d) Payment for Period of Leave

(i) 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.

(ii) In addition thereto, all employees before going on annual leave shall receive a loading of 17 1/2% on payments made for annual leave. Such loading shall not apply to proportionate leave on termination of service, exception where termination by the employer is no fault of the employee.

(e) Proportionate Leave on Termination of Service

An employee, after one month continuous service inclusive of any day as prescribed by Clause 17 - Holidays with Pay and Clause 33 - Sick Leave, who either

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leaves the employment or is terminated in accordance with Clause 13 - Contract of Employment, subclause (d) - Contract of Employment, paragraph (i), shall be paid at a rate of 2.923 hours for each completed week of service.

(f) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 17 - Holidays with Pay of this award, fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

(g) Broken Leave

Annual leave shall be taken in a continuous period provided that when the employee and the employer mutually agree then leave may be taken in more than one period, however, one such period must be of at least 14 consecutive days.

(h) Any disputes under this clause shall be determined by the Tasmanian Industrial Commission, whose decision shall be final.

11. CLOTHING

(a) Where an employee is required by the employer to wear a washable outer garment such employee shall be provided by the employer, free of cost to the employee, with serviceable outer garments.

(b) Where any wet work is performed waterproof aprons, rubber boots and rubber gloves shall be provided free of cost to the employee.

(c) Where the nature of the work requires an employee to wear waterproof pants and raincoats, they shall be provided by the employer free of cost to the employee on a fair wear and tear basis and be of such quality as is appropriate to the nature of the work.

(d) Items of clothing as provided for in this clause shall remain the property of the employer. The loss of such clothing due to any cause arising out of neglect or misuse by the employee shall be a charge against the wages of the employee, provided that no charge shall be made in respect of reasonable wear and tear.

12. COMPASSIONATE LEAVE

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

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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.

13. CONTRACT OF EMPLOYMENT

(a) General

- (i) Upon commencing work with an employer, all employees shall be classified under the relevant division of this award and at a level as prescribed in Clause 8 - Wage Rates of this award.
- (ii) Further, all employees prior to commencement of duties shall be provided with advice in writing, as to their determined classification level and shall remain upon such level and be paid the wage rate thereof until reclassified. Further advice in writing will be issued by the employer if an employee is reclassified.
- (iii) 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.
- (iv) 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.

(b) Full-time Employees

Full-time employees shall be engaged by the week.

(c) Casual Employees (as defined)

- (i) For casual employees (as defined) written advice as prescribed in subclause (a) (ii) of this clause shall in addition clearly state that the employee is engaged as a casual employee (as defined).

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- (ii) The employer shall, at the time of engagement, advise the employee, to the best of the employers' ability, of the period over which they expect to be able to offer ongoing availability of work on an irregular basis and shall regularly review and update this position with the employee as changes occur.
 - (iii) Where it is the intention of the employer not to re-engage the employee referred to in subclause (ii) hereof when work becomes available, the employer shall notify the employee in writing of such intention as soon as the decision is made.
 - (iv) Casual employees (as defined) shall be engaged for a minimum of 3 hours per engagement.
 - (v) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty eighth of the weekly rates prescribed for the work performed, plus 20%, such additional amount to be payable in lieu of annual leave, sick leave and public holidays.
- (d) Termination of Employment
- (i) Employment may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
 - (ii) For the purpose of this clause, termination of employment shall include termination with or without notice.
 - (iii) Nothing in this clause shall affect the right of an employer to dismiss and employee without notice for serious and wilful misconduct or neglect of duty.

PROVIDED that any dispute or claim arising out of this subclause shall be dealt with in accordance with Clause 29 - Resolution of Disputes contained in this award.

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.

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- (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.

15. FIRST AID

- (a) The employer shall provide and maintain, in accordance with the Industrial Health and Safety Act (1977) and Regulations (1979), a first aid outfit including an affixed listing of current employees holding a first aid certificate.
- (b) Any full time employee holding first aid qualifications from Red Cross or St John Ambulance and appointed by the employer to perform first aid duty shall receive \$1.64 per working day.

16. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENTS

- (a) Payment for work on Holidays

The wages that shall be paid to all employees for work performed on holidays as prescribed in Clause 17 - Holidays with Pay of this award, shall be double time and one half.

- (b) Payment for work of Saturday and Sunday

- (i) Saturday work - the amount of wages that shall be paid to all employees who perform work on Saturdays shall be at the rate of time and one half the ordinary rate for the first three hours and double time thereafter.
- (ii) Sunday work - the amount of wages that shall be paid to all employees who perform work on Sundays shall be double the ordinary rate.

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(iii) All employees who are required to work on any of the days prescribed in Clause 17 - Holidays with Pay, and this subclause shall be paid a minimum as for 3 hours worked at the appropriate penalty rate.

(c) Payment for work on Overtime

(i) Subject to the provisions of Clause 18 - Hours of Work, subclause (b), an employee, including a casual employee (as defined) who performs work in excess of 38 hours per week or before the time fixed for commencing work or after the time fixed for ceasing work or in excess of eight hours per day, payment shall be made at the rate of time and one half for the first three hours and double time thereafter. In computing overtime each days work shall stand alone.

(ii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.

(iii) 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 overtime rate.

(d) Payment for work on Holidays, Saturdays, Sundays and Overtime for Casual Employees (as defined)

A casual employee (as defined) working on Holidays as prescribed in Clause 17 - Holidays with Pay, Saturdays, Sundays and Overtime shall be paid the applicable classification hourly rate defined in Clause 8 - Wage Rates plus the applicable penalty rates as described in this clause.

PROVIDED that the loading applicable under Clause 13 - Contract of Employment, - subclause (c) - Casual Employees, paragraph (v) does not apply to casual employees (as defined) who are employed to work Holidays, Saturdays, Sundays and Overtime.

17. HOLIDAYS WITH PAY

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

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

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- (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, the employee had been at work.
- (c) Where any of the aforementioned holidays, excluding Anzac Day, fall on a Saturday, Sunday or Rostered Day Off and are observed on the Saturday, Sunday or Rostered Day Off respectively, then the following ordinary working day shall be regarded as a holiday for the purposes of this award.
- (d) Where the employer and employees mutually agree then any other day may be substituted for any of the above named days.

18. HOURS OF WORK

- (a) For full time employees the ordinary hours of work per week shall be 38 hours to be mutually arranged between the employer and the employee between the hours of 6.00 a.m. and 6.00 p.m. Monday to Friday inclusive and not more than 8 hours per day at ordinary time, provided the work is performed in one continuous period exclusive of meal breaks.

PROVIDED that ordinary hours of work as prescribed in this clause may be increased, but shall not exceed a total of 10 hours on any day at ordinary rates, between the times as specified for the commencement and cessation of work for the purpose of arranging hours so that employees work:

- (i) not more than 9 days (Monday to Friday) in each two (2) week cycle; or
 - (ii) not more than 19 days (Monday to Friday) in each four (4) week cycle.
- (c) The employer may utilise any day of the week (Monday to Friday) as a rostered day off and shall also have the right to change an employee's rostered day off provided that employee is given not less than 24 hours notice of such change and further provided that the day off is taken in the current work cycle.

19. MEAL ALLOWANCE

- (a) An employee required to work overtime for more than two hours shall either be supplied with a meal by the employer or paid \$5.00 for each meal. For the purpose of this clause a meal shall consist of a recognised main course.
- (b) Unless the employer advises an employee on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second or subsequent meal or make payment in lieu thereof as above prescribed.

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- (c) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime or is required to work less than the amount advised, he shall be paid as above prescribed for meals which he has provided but which are surplus.

20. MEAL PERIOD

- (a) There shall be a cessation of work each day for the purpose of taking an unpaid meal break of not less than thirty minutes.
- (b) If, when the meal time customary in the industry arrives, an employee is required to continue working and his meal interval is thereby deferred, he shall be paid at the rate of time and one half for the first half hour of such deferral and at the rate of double time for any further time elapsing until he gets a meal interval of the customary duration.

PROVIDED that if the continuance of work is reasonably necessary and could not have been avoided by any reasonable action of the employer, the employee shall be allowed time not exceeding twenty minutes before such penalty rate time begins to accrue.

- (c) If on a day, not a Sunday or holiday as prescribed in Clause 17 - Holidays with Pay, an employee, after working for five hours without a meal break, does not then get a meal interval of the customary duration, he shall be paid at the rate of double time for all time elapsing from the end of the five hours until he gets such meal interval.
- (d) An employee shall not be required to work for more than four hours on a Sunday or holiday, as prescribed in Clause 17 - Holidays with Pay, or more than four hours overtime on any day without a meal interval of at least forty-five minutes.
- (d) Two rest periods of ten minutes duration on each day or shift to be counted as time worked shall be allowed without deduction of pay. The employer shall fix the time for the commencement of the tea break and shall provide the necessary facilities and the labour to prepare beverages for the employees at the commencement of each rest period.

21. MIXED FUNCTIONS

Where an employee is required to carry out duties which attract a higher rate of pay than his/her substantive classification on any one day for a time exceeding two hours in the aggregate, that employee shall be paid the higher classification rate for time so worked.

If so engaged for two hours or less in the aggregate during one day the employee shall be paid the higher classification rate only for the time worked.

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22. NO REDUCTION OF WAGES IN CERTAIN CASES

Subject to the provisions of subclause (b) and (c) of Clause 8 - Wage Rates of this award, where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee, the wage rates so paid in excess shall not be reduced as a result of this award.

23. NOTICE BOARD

The employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in his establishment, upon which an accredited union representative shall be permitted to post formal union notices, signed or countersigned by the representative posting them. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

24. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Paternity leave' means leave of the type provided for in Part B - Paternity Leave.

'Child' means a child of the employee under the age of one year.

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

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or

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(iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

(i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

(ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

(iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

At the time specified in subclause (e) hereof the employee must produce to her employer:

(i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

(i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

(ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).

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

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

(f) Transfer to a safe job

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

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

(g) Variation of Period of Maternity Leave

(i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

(1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(2) The period may be further lengthened by agreement between the employer and the employee.

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

(h) Cancellation of Maternity Leave

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

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

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(i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART B - PATERNITY LEAVE

- (a) Nature of leave

Paternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Maternity leave' means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

'Child' means a child of the employee or the employee's spouse under the age of one year.

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

'Primary care-giver' means a person who assumes the principal role of providing care and attention to a child.

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

- (c) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by subclause (d) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

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- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in subclause (e) the employee must produce to his employer:

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (1) the birth occurring earlier than the expected date; or
 - (2) the death of the mother or the child; or
 - (3) other compelling circumstances.

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(iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

(i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:

(1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(2) the period may be further lengthened by agreement between the employer and the employee.

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

(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

(ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

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(j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave.

- (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

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PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

'Relative adoption' occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

'Primary care-giver' means a person who assumes the principal role of providing care and attention to a child.

'Spouse' includes a de facto spouse.

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause, or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility

An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of the placement of the child;

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- (ii) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (1) any period of leave taken pursuant to paragraph (i) hereof; and
 - (2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

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- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
 - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
 - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave.
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

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- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (c)(ii) hereof.

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- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

'Male employee' means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

'Female employee' means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

'Spouse' includes a de facto spouse.

'Former position' means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this part whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

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'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(b) Entitlement

With the agreement of the employer:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

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(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

(i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

(ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

An employee working part-time under this part shall have sick leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(h) Part-time Work Agreement

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

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

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- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (iv) The terms of this agreement shall apply to the part-time employment.

(i) Termination of Employment

- (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

23. PAYMENT OF WAGES

- (a) Wages may be paid weekly, fortnightly or by agreement between the employer and employee for some other period.
- (b) All such wages, allowances and other monies due shall be paid in cash, or by agreement between the employer and employees by cheque, bank cheque, bank or similar transfer or combination thereof.
- (c) Particulars of details of payment to each employee shall be included on a pay envelope including the payment, or in a statement handed to the employee 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 gross amount of wages and allowances paid
 - (v) The amount of each deduction made and the nature thereof
 - (vi) The net amount of wages and allowances paid

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(vii) Details of superannuation payments

In addition, the following details will also be included in the statement when such payments and benefits apply:

(viii) The number of hours paid at overtime rates and the amount paid therefore

(ix) The amount of allowances or special rates paid and the nature therefore

(x) Annual holiday payments

(xi) Payment due on termination, including payment for annual leave, rostered day off accumulation and public holidays

(d) Upon termination provided the appropriate notice has been given all monies due to the employee exclusive of superannuation, shall be paid at the time of termination.

PROVIDED that where this is not practicable the employer shall have twenty four hours in which to make such payment.

(e) The provisions of subclause (c) of this clause shall apply from 1 July 1992.

26. PIECE WORK

Piece work rates for process attendants (as defined) shall be fixed by agreement between the employer and the employee concerned at such rates as will enable an employee working ordinary time to earn at least 15% above the prescribed rate per hour for the relevant classification level. Such rates shall, when fixed, be paid in lieu of the relevant classification level as prescribed in Clause 8 - Wage Rates.

27. PREFERENCE TO UNIONISTS

(a) Preference of employment in respect to classifications pertaining to Division A of this award subject to subclause (b), (c) and (d) and (e) of this clause shall be given equally to persons who are adequately experienced and otherwise competent and who are either;

(i) members of the Australian Workers' Union, Tasmania Branch; or members of the Food Preservers Union of Australia (Tasmania Branch) or

(ii) persons who are prepared at the point of engagement to give an undertaking that they will within 14 days make application for membership of the Australian Workers' Union, Tasmania Branch or the Food Preservers Union of Australia (Tasmania Branch).

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- (b) If more than one person described in subclause (a) (i) and (ii) of this clause make application for employment, then the employer shall have absolute discretion to select any one or more of such persons.
- (c) Owners of businesses, their spouses or children shall not be subject to this clause.
- (d) Conscientious objectors shall not be subject to the provisions of this clause.
- (e) In respect of subclause (a) (i) and (ii), when the employer's business involves the farming of fish, aquaculture and/or marine products as well as the processing of the same, the Australian Workers' Union, Tasmania Branch shall have coverage of all employees within the employer's enterprise to the exclusion of all other unions.

28. PRODUCTIVITY AND EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered in the Scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by its elected union delegates or duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should 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.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) 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:

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- (i) developing a more highly skilled workforce;
 - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (iii) removing barriers to the utilisation of skills acquired.
- (h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of the resolution of disputes clause.

29. RESOLUTION OF DISPUTES

Any industrial dispute arising during the currency of the award shall be dealt with as follows:

- (a) the matter should first be discussed between the employee and his immediate supervisor. At the employee's option his delegate may also be present;
- (b) if not settled, the matter shall be submitted by the shop steward or union representative to the industrial officer or other appropriate officer of the employer;
- (c) if not settled, the matter shall be formally submitted by the State Secretary or other appropriate official of the union concerned to the employer;
- (d) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, will take all possible action to settle any dispute within 7 days of notification of the dispute to the employer;
- (e) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

30. RIGHT OF ENTRY

- (a) Reasonable facilities shall be afforded representatives of the Australian Workers' Union, Tasmania Branch or Food Preservers Union of Australia (Tasmania Branch) as accredited hereafter, on production of accreditation to the employer for that purpose, for investigating grievances of members, or for the purpose of interviewing employees on legitimate union business and without affecting the generality of the foregoing provision, each employer shall permit a representative of the organisation, to enter his premises during working hours at a mutually agreeable time for the purpose of interviewing employees. The representative shall not unduly interfere with the workings of the establishment.

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- (b) If an 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, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.
- (c) That without the consent of the employer the representative shall not visit the premises more than once a week.
- (d) A representative shall be duly accredited if the person is the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the seal of the organisation and bearing the signature of the holder.

31. SAFETY EQUIPMENT

All safety equipment issued by the employer must be worn or used by an employee at the direction of the employer.

32. SHIFT WORK

- (a) Prior to the implementation of shift work (except where shift work is already being performed prior to the making of this award) the employer shall notify the employee(s) and the relevant union(s) of their intention to commence shift work and discussions taking place with the relevant union, the provisions of this clause shall only be enacted where the period of shift work to be worked shall be not less than four weeks duration.

- (b) Definitions

- (i) For the purpose of this clause -

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

'Continuous work' means work carried on with consecutive shifts of employees throughout the twenty-four hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

'Night shift' means any shift finishing subsequent to midnight and at or before 8.00 a.m.

'Rostered shift' means a shift of which the employee concerned has had at least forty-eight hours notice.

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(ii) Hours - Continuous Work Shifts

This subclause shall apply to shift workers on continuous work as hereinbefore defined. The ordinary hours of shift workers shall average 38 per week inclusive of crib time and shall not exceed 152 hours in twenty-eight consecutive days; provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period exceeding 28 consecutive days.

Subject to the following conditions, such shift workers shall work at such times as the employer may require:

- (1) a shift shall consist of not more than 10 hours inclusive of crib time. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned;
- (2) except at the regular change-over of shifts, an employee shall not be required to work more than one shift in each twenty-four hours;
- (3) twenty minutes shall be allowed to shift workers each shift for crib which shall be counted as time worked.

(iii) Hours - Other than Continuous Work

This subclause shall apply to shift workers not upon continuous work as hereinbefore defined. The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (1) 38 hours within a period not exceeding seven consecutive days; or
- (2) 76 hours within a period not exceeding fourteen consecutive days; or
- (3) 114 hours within a period not exceeding twenty-one consecutive days; or
- (4) 152 hours within a period not exceeding twenty-eight consecutive days.

The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than five hours without a break for a meal. Except at regular change-over of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

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PROVIDED that the ordinary hours of work prescribed herein shall not exceed 10 hours on any day. Provided further that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned.

(iv) Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

(v) Variation by Agreement

Subject to (ii) - Hours - Continuous Work Shifts and (iii) - Hours - Other than Continuous Work of this subclause, the method of working shifts may in any case be varied by agreement between the employer and the majority of employees concerned.

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or, in the absence of agreement, by seven days notice of alteration given by the employer to the employees.

(c) Shift Allowances

(i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his ordinary rate.

(ii) A shift worker who works on an afternoon or night shift which does not continue:

- (1) for at least 5 successive afternoons or nights in a 5 day workshop or 6 successive afternoons or nights in a 6 day workshop; or
- (2) for at least the number of ordinary hours prescribed by one of the alternative arrangements in (ii) - Hours - Continuous Work Shifts or (iii)
- (3) Hours - Other than Continuous Work of this subclause, shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof, in addition to his ordinary rate.

(iii) An employee who:

- (1) during a period of engagement on shift, works night shift only; or
- (2) remains on night shift for a longer period than four consecutive weeks; or

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- (3) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle,

shall during such engagement period or cycle be paid 30 per cent more than his ordinary rate for all time worked during ordinary working hours on such night shift.

PROVIDED that for a casual employee (as defined) engaged in shift work shall receive an amount of wages as prescribed in 'loaded' rate as defined in Clause 7 - Definitions.

(d) Saturday Shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (a) of this clause.

(e) Overtime

Shift workers for all time worked in excess of hours outside the ordinary working hours prescribed by this award or on a shift other than a rostered shift shall -

- (i) if employed on continuous work be paid at the rate of double time; or
(ii) if employed on other shift work at the rate of time and a half for the first three hours and double time thereafter,

except in each case when the time is worked -

- (iii) by arrangement between the employees themselves;
(iv) for the purpose of effecting the customary rotation of shifts; or

PROVIDED when not less than 8 hours notice has been given to the employer by a relief worker that the employee will be absent from work and the employee whom he should relieve is not relieved and is required to continue to work on his rostered day off, the unrelieved employee shall be paid double time.

(f) Requirements to Work Reasonable Overtime

An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

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(g) Sundays and Holidays

- (i) Shift workers on continuous shifts for work on a rostered shift the major portion of which is performed on a Sunday shall be paid at the rate of double time.
- (ii) Shift workers on other than continuous work for all time worked on a Sunday or holiday shall be paid at the rates prescribed by Clause 16 - Holidays and Sunday Work of this award.
- (iii) Where shifts commence between 11 p.m. and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate.

PROVIDED that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday as prescribed in Clause 17 - Holidays with Pay and extending into a Sunday or holiday as prescribed in Clause 17 - Holidays with Pay, shall be regarded as time worked on such Sunday or holiday as prescribed in Clause 17 - Holidays with Pay.

- (iv) Where shifts fall partly on a holiday as prescribed in Clause 17 - Holidays with Pay, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(h) Daylight Saving

Notwithstanding anything contained elsewhere in this award, in any area where by reason of the legislation of a State summer time is prescribed as being in advance of the standard time of that State the length of any shift:

- (i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period, and
- (ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period,

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

In this subclause the expressions 'standard time' and 'summer time' shall bear the same meaning as are prescribed by the relevant State legislation.

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33. SICK LEAVE

- (a) A full time employee, entitled to sick leave payments 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 for any period in respect of which he is entitled to workers' compensation;
 - (ii) the employee shall, wherever possible, inform the employer of his inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) the employee 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) subject to subclause (v) hereof an employee shall not be entitled in any year to sick leave credit in excess of 76 ordinary hours;
 - (v) **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.
- (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.

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34. SUPERANNUATION

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into the funds known as TASPLAN or F.I.S.T. or any other approved fund (as defined) where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual employees entitled to contributions under the provisions of subclause (a) (iii) of this clause.
- (ii) 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.
- (iii) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (a) (i) of this clause, a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 3% represents less than such amount.
- (iv) For new employees contributions shall commence from the date the employee commenced employment.
- (v) 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 C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (vi) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(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' means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

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'Food Industry Superannuation Trust' shall mean the superannuation fund established by Trust Deed dated 12 January 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation funds.

'Ordinary Time Earnings' shall include an employee's classification rate, overaward payments, 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.

'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(c) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN or F.I.S.T. in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or F.I.S.T.

(d) 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 1 March 1992 for hearing and determination.

Such application shall contain the following information:

- (a) Name of Fund into which the funds are to be paid.
- (b) Evidence of the funds compliance with Commonwealth Operational Standards.
- (c) Summary of Structure and Benefits.
- (d) Level of Administration Charge.
- (e) Any other relevant information.

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- (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 15 November 1991 may make application for exemption in accordance with subclause (c) 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 15 November 1991.

35. TIME AND EMPLOYMENT RECORD

- (a) All employees including those employees who work in accordance with Clause 26 - Piece Work, shall indelibly record their daily time of beginning and ceasing work in a book, on time cards, or by mechanical contrivance. Any one of such means of recording shall be provided and maintained by the employer.
- (b) An employer shall keep a record from which can readily be ascertained the name of each employee, the relevant classification level as prescribed in Clause 8 - Wage Rates of this award, the hours worked each day and the wages and allowances paid each week, or in the case of casual employees (as defined) the wages and allowances paid for each period of employment.

The record must show the employees date of birth, tax file number, commencement date and if appropriate termination date, superannuation membership number and contributions, record of sick leave and record of leave entitlements.

- (c) All employees, including casual employees (as defined) shall be provided, upon written request or upon termination of employment, with advice in writing of such details of employment as prescribed subclause (b) of this clause.

36. TRAINEE - SEAFOOD HANDLER (AS DEFINED)

- (a) A Trainee - Seafood Handler (as defined) (hereinafter referred to as the trainee) shall attend an approved on- and off-the-job training course or program prescribed in the relevant training agreement (as defined) or as notified to the trainee by the Training Authority of Tasmania.

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- (b) Trainees may be engaged by employers registered with the Training Authority of Tasmania. The employer shall ensure that the trainee is permitted to attend the prescribed off-the-job training course and is provided with on-the-job training approved by the Training Authority of Tasmania.
- (c) The employer shall provide a level of supervision in accordance with the approved training plan during the traineeship period.
- (d) The employer agrees that the implementation of the training plan will be monitored by officers of the Training Authority of Tasmania and that training records or work books may be utilised as part of this monitoring process.
- (e) All other terms and conditions of this award shall apply unless specifically varied by this clause.
- (f) The trainee shall be engaged for a period of twelve months as a full-time employee provided that the trainee shall be subject to a satisfactory probation period of up to one month.
- (g) The trainee is permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the Training Agreement (as defined).
- (h) It is acknowledged that service as a trainee is to be counted as service for all purposes of determining long service leave entitlements provided it is continuous with further service. However, it is agreed that service as a trainee shall also be counted if the trainee is appointed to a position by the employer within three months of the termination of the traineeship.
- (i) Under normal circumstances overtime and shift work shall not be undertaken by trainees.

If during the traineeship period it is necessary because of the nature of the work and training experience then such shift/overtime work may be worked by the trainees.

Where overtime or shift work is undertaken by the trainee the appropriate award conditions shall apply based on the rate for the trainee classification.

- (j) As the Australian Traineeship System is a system of vocational training providing work based training, focusing on developing practical competence, trainees shall be exempt from action with respect to industrial disputes. However, the employer shall observe the provisions determined by the Training Authority of Tasmania in respect of the use of trainees in the time of industrial disputes.
- (k) Wherever possible traineeship positions shall be additional to existing staff numbers. Existing full-time employees shall not be displaced from employment by the trainee.

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- (l) The union shall be afforded reasonable access to the trainees for the purpose of explaining the role and function of the union.
- (m) This clause represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

37. TRAVELLING TIME AND ALLOWANCES

- (a) An employee who on any day or from day to day is required to work at a workplace away from the usual workplace shall, at the direction of the employer, present for work at such workplace at the usual starting time; but all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent in travelling from the employees home to usual workplace and returning) travelling time shall be paid at ordinary rates of pay.
- (b) Where an employee is required to remain away from their usual place of residence the employee shall be paid for all expenses reasonably incurred whilst so absent.
- (c) Where an employee with the approval of the employer, is required to use a private motor vehicle for the purposes of the employer, then the employee will be paid 31 cents per kilometre travelled.

CONDITIONS FOR EMPLOYEES IN DIVISION B - SEA BASED FINFISH FARM EMPLOYEES

38. ALLOWANCES

Tool Allowance

All employees who are required to use tools shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.80 per week.

PROVIDED that such allowances shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purposes.

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39. GENERAL CONDITIONS

The provisions of the following clauses in Division A of this award shall also apply to employees in this division.

- Clause No. 10 - Annual Leave
- 11 - Clothing
- 12 - Compassionate Leave
- 13 - Contract of Employment
- 14 - Enterprise Flexibility
- 15 - First Aid
- 16 - Holiday, Saturday, Sunday and Overtime Payments
- 17 - Holidays with Pay
- 19 - Meal Allowance
- 20 - Meal Period
- 21 - Mixed Functions
- 22 - No Reduction of Wages in Certain Cases
- 23 - Notice Board
- 24 - Parental Leave
- 25 - Payment of Wages
- 26 - Piece Work
- 28 - Productivity and Efficiency
- 29 - Resolution of Disputes
- 31 - Safety Equipment
- 33 - Sick Leave
- 35 - Time and Employment Record
- 37 - Travelling Time and Allowances

40. HOURS OF WORK

(a) The ordinary hours of work shall be 38 hours per week over a maximum of 5 consecutive days to be worked between 5.00 a.m. and 7.00 p.m. from 1 October to 31 March (inclusive) and between 6.00 a.m. and 6.00 p.m. from 1 April to 30 September (inclusive) on any day Monday to Friday inclusive.

(b) The normal work cycle shall be Monday to Friday inclusive.

PROVIDED that by agreement between the employer, the employee and the union, the following additional work cycles may also be worked:

- (i) Sunday to Thursday inclusive
- (ii) Tuesday to Saturday inclusive

(c) Any existing employees current work cycle may only be changed by mutual agreement between the employer and the employee, and further that where agreement cannot be reached the matter shall be resolved in accordance with Clause 29 - Resolution of Disputes of this award.

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- (d) Employers may require employees to work up to eight hours on any one day as ordinary time.

PROVIDED however that ordinary hours of work as prescribed in this subclause may be increased but shall, by agreement between the employer and the employee, not exceed a total of 10 hours on any day at ordinary rates between the times as specified for the commencement and cessation or work for the purpose of arranging hours so that employees work:

- (i) not more than 9 days (Monday to Friday) in each two (2) week cycle; or
- (ii) not more than 19 days (Monday to Friday) in each four (4) week cycle.

- (e) Work Outside the Span of Hours

Notwithstanding any other subclause of this clause:

- (i) all employees, the majority of whose hours of work fall within those prescribed in subclause (a) of this clause and are required to work outside this span of hours and/or
- (ii) all employees who work on Saturday or Sunday as part of the work cycle shall have such time worked, outside of the provisions of subclause (a) of this clause, considered as ordinary hours of work and shall receive, for such time worked outside the provisions of subclause (a) of this clause the rate of pay as prescribed in subclause (f) - Overtime Rates, paragraph (i) of this clause.

- (f) Overtime Rates

- (i) For all time of duty in excess of 38 hours per week or before the time fixed for commencing work or after the time fixed for ceasing work or on a Saturday or Sunday, or in excess of eight hours per day, payment shall be made at the penalty rate prescribed in Clause 16 - Holiday, Saturday, Sunday and Overtime Payments.
- (ii) In computing overtime each days work shall stand alone.
- (iii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
- (iv) 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 overtime rate.

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(g) Start and Finish Time

- (i) The actual start and finish times shall be nominated by the employer and shall not be changed without giving at least 7 days notice.
- (ii) Notwithstanding the above where it is necessary to change start and finish times due to emergency circumstances, e.g. breakdowns, sickness or other reasons beyond the employer's control, an employee shall be advised of such change of work hours on the previous working day.

(h) Rostered Day Off

The employer may utilise any day of the week (Monday to Friday) as a rostered day off and shall also have the right to change an employee's rostered day off provided that employee is given not less than 24 hours notice of such change and further provided that the day off is taken in the current work cycle.

41. PREFERENCE TO UNIONISTS

- (a) Preference of employment in respect to classifications pertaining to Division B covered by this award, subject to subclauses (b), (c), (d) and (e) of this clause, shall be given equally to persons who are adequately experienced and otherwise competent and who are either:
 - (i) members of the Australian Workers' Union, Tasmania Branch;
 - (ii) persons who are prepared at the point of engagement to give an undertaking that they will within 14 days make application for membership of the Australian Workers' Union, Tasmania Branch.
- (b) If more than one person described in subclause (a) (i) and (ii) of this clause makes application for employment, then the employer shall have absolute discretion to select any one or more of such persons.
- (c) Owners of businesses, their spouses and children shall not be subject to the provisions of this clause.
- (d) Conscientious objectors shall not be subject to the provisions of this clause.
- (e) In respect of subclause (a) (i) and (ii), when the employers business involves the farming of fish, aquaculture and/or marine products as well as the processing of the same, the Australian Workers' Union, Tasmania Branch shall have coverage of all employees within the employers enterprise to the exclusion of all other unions.

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42. RIGHT OF ENTRY

- (a) Reasonable facilities shall be afforded representatives of the Australian Workers' Union, Tasmania Branch as accredited hereafter, on production of accreditation to the employer for that purpose, for investigating grievances of members, or for the purpose of interviewing employees on legitimate union business and, without affecting the generality of the foregoing provision, each employer shall permit a representative of the organisation, to enter his premises during working hours at a mutually agreeable time for the purpose of interviewing employees. The representative shall not unduly interfere with the workings of the establishment.
- (b) If an 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, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.
- (c) That without the consent of the employer the representative shall not visit the premises more than once a week.
- (d) A representative shall be duly accredited if the person is the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the seal of the organisation and bearing the signature of the holder.

43. SUPERANNUATION

- (a) Contributions
 - (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into the fund known as TASPLAN or any other approved fund (as defined) where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual employees entitled to contributions under the provisions of subclause (a) (iii) of this clause.
 - (ii) 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.
 - (iii) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (a) (i), a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 3% represents less than such amount.

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- (iv) For new employees contributions shall commence from the date the employee commenced employment.
- (v) 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 C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (vi) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(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' means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

'Ordinary Time Earnings' shall include an employee's classification rate, overaward payments, 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.

'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(c) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN.

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(d) 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 1 March 1992 for hearing and determination.

Such application shall contain the following information:

- (a) Name of Fund into which the funds are to be paid.
 - (b) Evidence of the funds compliance with Commonwealth Operational Standards.
 - (c) Summary of Structure and Benefits.
 - (d) Level of Administration Charge.
 - (e) 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 15 November 1991 may make application for exemption in accordance with subclause (c) 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 15 November 1991.

R J Watling
COMMISSIONER

9 December 1992