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TASMANIAN INDUSTRIAL COMMISSION

s23 application for award or variation of award

Tasmanian Trades and Labor Council
(T11548 of 2004)
Private Sector Awards

Tasmanian Trades and Labor Council
(T11564 of 2004)
Private Sector Awards

Tasmanian Trades and Labor Council
(T11566 of 2004)
Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY
COMMISSIONER T J ABEY
COMMISSIONER J P McALPINE

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union -
Tasmanian Branch**
(T11412 of 2004)

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER J P McALPINE

Award variation – union name change - application approved

LEATHER, CANVAS AND SHEET PLASTIC FABRICATION AWARD

ORDER BY CONSENT -

**No. 1 of 2004
(Consolidated)**

CLAUSES 6, 8, 15 AND 26 ARE VARIED AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Leather, Canvas and Sheet Plastic Fabrication Award".

2. SCOPE

This award is established in respect of the industry of processing or manufacturing articles from canvas and/or leather and/or substitutes therefore, and/or from sheet plastic, and/or from rope, cord or twine.

3. ARRANGEMENT

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4. DATE OF OPERATION

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

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

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Leather, Canvas and Sheet Plastic Fabrication Award No. 2 of 2003 (Consolidated).

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) The Australian Workers' Union, 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 of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

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7. DEFINITIONS

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

8. WAGE RATES

1. WAGE RATES

The following shall be the wage rate for each classification:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Level 1				
First 6 months' experience	92	385.50	142.00	527.50
6 to 12 months' experience	92	385.50	142.00	527.50
More than 12 months' experience	92	385.50	142.00	527.50
Level 2	100	417.20	144.00	561.20
Level 3	110	438.10	144.00	582.10

2. CLASSIFICATIONS

Level 1

Employees at this level:

- (a) (i) will exercise discretion, initiative and judgement on the job in their own work, either individually or in a team environment; and
- (ii) will exercise skills to:
 - perform intermediate and/or complex task/s, or
 - perform a series of different operations on a machine/s, or
 - use a variety of machine types three of which require the exercise of Level 1 skills; and

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- (iii) will be responsible for quality assurance in their own work and assembly of component parts including having an understanding of how this work relates to subsequent production processes and its contribution to the final appearance of the finished item.
- (b) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
 - (i) may be required to investigate causes of quality deviations to specified standards and recommend preventative action.
 - (ii) may be required to exercise the skills necessary to assist in providing on-the-job instruction to employees in skills required at skill level 1 by way of demonstration and explanation.
 - (iii) may be required to record detailed information on, and recommend improvements to, production and/or quality.
 - (iv) may be required to take a co-ordinating role for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedures and methods), where the members of the group or team are at this skill level.
 - (v) may be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults).
 - (vi) may commence training in additional skills required to advance to a higher skill level.

Level 2 - Trade Rate

- (a) Employees at this level exercise the skills required to be graded at skill level 1 and have a comprehensive knowledge of product construction. Employees at this level will also:
 - (i) apply skills and knowledge, equivalent to that of a qualified tradesperson, that have been acquired as a result of training or experience; or
 - (ii) hold a relevant trade certificate, and
 - will work largely independently (including developing and carrying out of a work plan to specifications), and
 - will exercise a range of skills involving planning, investigation and resolution of problems, and/or training, and/or supervision, and/or specialised technical tasks, or
 - will make a whole item to specifications, or exercise equivalent skills.

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- (b) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
- (i) may be required to apply quality control/assurance techniques to their work group or team.
 - (ii) may have designated responsibility for the training of other employees (and if so shall be trained trainers).
 - (iii) may be responsible for quality and production records relating to their own work group or team.
 - (iv) may be required to take a co-ordinating role for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedure and methods), where the members of the group or team are at skill level 2 and below.
 - (v) may be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults and organisation or performance of necessary repair).
 - (vi) may commence training in additional skills required to advance to a higher skill level.

Level 3 - Sail Maker

'Sail maker' means a person who is engaged to and is capable of designing and making sails. The employee must be capable of performing all of the following functions:

- Laying out and cutting of the sails.
- Supervise the joining and assembling of the sail, including the positioning of the pattern pockets and cuts the flow to luff and leech of sail.
- Supervise and/or perform the work of 'ticking' ropes to surround the sail.
- Supervise the 'hand finishing' of the sail and be responsible for the final cut of the sail and will modify the sail if necessary.

An employee at this level performs functions above and beyond the duties of a Level 2 employee.

Indicative of the tasks which an employee at this level may perform are the following:

- (a) Exercise the skills attained through satisfactory completion of the training prescribed for this classification.
- (b) Exercises discretion within the scope of this level.

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- (c) Understands and implements quality control techniques.
- (d) Provides trade guidance and assistance as part of a team.
- (e) Applies intermediate computer numerical control techniques in machining.
- (f) Exercises basic skills in CAD/CAM operations.
- (g) Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than that of a Level 2 employee.

3. APPRENTICES

The minimum ordinary rates of payment to be paid by employers to apprentices shall be the undermentioned percentages of the appropriate tradesman's rate of wages appearing in this clause:

% of Tradesman's Rate (Level 2)	
First year	38%
Second year	55%
Third year	72%
Fourth year	88%

4. JUNIORS

The minimum rates of wages that may be paid by employers to junior workers shall be the undermentioned percentages of the appropriate classification.

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

5. LEADING HANDS

A leading hand shall, in addition to their classification rate, be paid the following amount:

- (a) In charge of 1 to 3 employees \$9.70 per week extra
- (b) In charge of 4 to 6 employees \$12.50 per week extra
- (c) In charge of 7 to 9 employees \$15.00 per week extra
- (d) In charge of more than 9 employees \$17.30 per week extra

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6. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) of this subclause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this subclause:

'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

'Disability Support Pension' means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

(c) Supported Wage Rates

Employees to whom this subclause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

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Assessed capacity (paragraph (d))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

PROVIDED that the minimum amount payable shall be not less than \$61 per week.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

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(g) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace Adjustment

An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

7. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by subclause 6 - Supported Wage System is \$467.40 per week.

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

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

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

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9. ALLOWANCES

Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Industrial and *Commercial Training Act, 1985* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.10 per week.

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

10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave) in any one of the occupations to which this award applies.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any holidays prescribed by Clause 13 - Holidays with Pay of this award, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

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

(c) Calculation of Continuous Service

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

- (i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) any absence from work on account of personal sickness or accident and in calculating the period of 12 months continuous service absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be paid of the period of continuous service; or

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

(d) Proportionate Leave on Termination of Service

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

12 1/2 hours for each completed month of continuous service.

(e) Leave to be Given and Taken

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

(f) Broken Leave

The annual leave provided for by this clause shall be given and taken at a time fixed by the employer.

By agreement between the employer and employee the leave may be broken into shorter periods provided one period is of at least 14 consecutive days.

(g) Calculation of Service

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

(h) Payment for Period of Leave

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

(ii) The provisions of this subclause shall not apply to proportionate leave on termination of service.

(iii) **PROVIDED** that when annual leave is granted in advance of an entitlement falling due, the leave loading is not payable until an employee has completed 12 months service.

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11. 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, step-mother, step-father, 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 3 ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

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

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

12. CONTRACT OF EMPLOYMENT

(a) Except as hereinafter provided, employment shall be by the week.

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

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

(c) Any employee not attending for duty shall, except as provided by Clause 24 - Sick Leave of this award, lose his pay for the actual time of such non-attendance.

(d) Casual Employees

An employee may be engaged on a casual basis provided:

- (i) the engagement is to fill a temporary vacancy occasioned by the absence of another employee; or
- (ii) the engagement does not exceed one month's duration;

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- (iii) a casual employee for ordinary time shall be paid an hourly rate of one thirty-eighth of the weekly rate expressed in Clause 8 - Wage Rates plus a loading of 20%.

Such loading shall be in lieu of annual leave, sick leave and public holiday payments.

(e) Part-time Employees

- (i) The employer may engage part-time employees to regularly work for less hours per day or per week than a full-time employee. A part-time employee shall be paid per hour one thirty-eighth of the appropriate rate in Clause 8 - Wage Rates.

A part-time employee shall be entitled to annual leave, sick leave and public holidays and all other award provisions in the same proportion as their hours bear to thirty-eight.

- (ii) A part-time employee shall work in accordance with a pre- established roster and shall be paid at overtime rates for work outside of such rostered hours.

PROVIDED that the roster may be altered by mutual agreement without notice or by the employer giving not less than 7 clear days notice.

- (iii) Should full-time employment within the classification of work being performed by a part-time employee become available the part-time employee shall be offered the opportunity to apply for such full-time position.
- (iv) No full-time employee will be reduced to part-time status without their written consent.
- (v) No more than 10% of the employees in any one establishment shall be engaged on a part-time basis provided that any establishment will be permitted to employ at least one part- time employee.
- (vi) The minimum engagement per day or shift for a part-time employee shall be three hours.

13. HOLIDAYS WITH PAY

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

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

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- (b) Payment for the holidays mentioned in subclause (a) above, which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holidays, he had been at work.
- (c) Payment to an employee (including a casual employee) for work performed on holidays mentioned in subclause (a) above, shall be at the rate of double time and one half for all time worked on that holiday.

14. HOURS

- (a) The ordinary hours of work subject to the exceptions herein provided, shall be an average of 38 hours per week, to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven (7) consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen (14) consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one (21) consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days.

The method of working may be one of the following:

- (v) by employees working less than eight (8) ordinary hours each day; or
- (vi) by employees working less than eight (8) ordinary hours on one or more days each week; or
- (vii) by fixing one week day on which all employees will be off during a particular work cycle; or
- (viii) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.

The ordinary hours of work prescribed herein may be worked on any day or all of the days of the week, Monday to Friday.

- (ix) Where the 38 hour week is organised in accordance with subclauses (a)(vii) or (a)(viii) the employer may require the employee to accumulate the rostered days off up to a maximum accumulation of 5 days.
- (b) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks, at the discretion of the employers between 7.30am and 5.30pm, provided that the spread of hours may be altered by mutual agreement between the employer and the majority of employees in the plant or section or sections concerned.

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PROVIDED that, work done prior to the spread of hours fixed in accordance with this subclause for which overtime rates are payable, shall be deemed for the purposes of this subclause to be part of the ordinary hours of work.

- (c) The conditions upon which the 38 hour week is operated is that an objective review of current practices can be conducted to establish where improvements can be made and implemented.
- (d) Where an agreement cannot be reached in-plant and where problems arise after agreement or understandings have been achieved, a formal monitoring procedure will apply. The procedures to be applied with respect to special, anomalous or extraordinary problems, where unable to be resolved by the parties, will be referred in the final analysis to the Tasmanian Industrial Commission, or its legal successor, before any industrial action is taken on the matter.
- (e) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned. In the absence of agreement at plant level the procedure for resolving special anomalous or extraordinary problems shall be applied in accordance with subclause (d) of this clause and shall be applied without delay.
- (f) The employer and the majority of employees in the plant or section concerned, may agree that the ordinary working hours are to exceed eight on any day, thus enabling a week day to be taken off more frequently than would otherwise apply. (Not to exceed 10 hours in any day).
- (g) Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.
- (h) Except as provided in subclause (i) of this clause, in cases where by virtue of the arrangement of his ordinary working hours, an employee in accordance with subclause (a)(vii) and (a)(viii) of this clause, is entitled to a day off during his work cycle, such employee shall be advised by the employer at least four (4) weeks in advance of the week day he is to take off.
- (i) Substitute Days
 - (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subclauses (a) (vii) and (viii) of this clause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in emergency situations.
 - (ii) An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

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- (j) The ordinary hours of work prescribed herein, shall not exceed ten (10) hours in any day, provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the plant or section or sections concerned and the Union or relevant branch thereof.
- (k) After the first three weeks of employment, the ordinary starting or finishing time of an employee shall not be changed during the currency of the working week unless overtime is paid, provided however that the starting or finishing times may be changed without payment of overtime in the case of sickness or accident or breakdown of plant or equipment.
- (l) The starting and finishing times fixed by this clause shall be strictly observed by employees. The start and finish times expressed shall mean the times at which an employee is at the designated work station ready for work. An employee shall lose pay for late start or early finish.

15. MEAL INTERVAL AND MEAL ALLOWANCE

- (a) No employee shall be required to work more than 5 hours without an interval for a meal break for a minimum period of half an hour to a maximum period of one hour.
- (b) Any employee required to work overtime for more than one and a half hours immediately following his ordinary working hours, without being notified the previous day by the employer that he will be so required to work, shall be supplied with an adequate meal by the employer or be paid a meal allowance of \$12.70.
- (c) Any dispute as to what constitutes an adequate meal shall be referred to the Tasmanian Industrial Commission for determination.
- (d) The payment prescribed in subclause (b) of this clause shall be made on the day on which the overtime is worked.

16. MIXED FUNCTIONS

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

Provided that where it is the practice of the employer to rotate employees between various jobs the two hour limitation shall be increased to 4 hours.

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17. OVERTIME

- (a) For all work performed in excess of the hours prescribed in Clause 14 - Hours subclause (a) of this award or before or after the usual time of starting or finishing of work, an employee shall be paid at the rate of time and one half for the first three hours and double time thereafter.
- (b) Requirement to Work Reasonable Overtime
 - (i) Subject to paragraph (ii) of this subclause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;
 - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (5) any other relevant matter.

18. 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.

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'**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
- (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).

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- (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.
- (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.

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- (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.
- (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.

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- (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.

(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:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;

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

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(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.

(j) Termination of Employment agreement.

- (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.

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- (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.

PART C - ADOPTION LEAVE

- (a) Nature of Leave
 - Adoption leave is unpaid leave.
- (b) Definitions
 - For the purpose of this part:

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'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;
- (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.

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(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.
- (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.

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- (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.
 - (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.

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(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.
- (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.

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- (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.

'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:

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- (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.
- (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.

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- (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.
- (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.

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- (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
- (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.

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- (iv) Unbroken service as a replacement employee shall be treated as continuous service as provided for in subclause (a) - Definitions, '**Continuous service**' of this part.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

19. PAYMENT OF WAGES

The wages prescribed by this award shall be paid not later than Thursday of each week. By agreement between the employer and the majority of employees wages may be paid other than in cash.

Provided that if agreement cannot be reached the employer may introduce payment by electronic funds transfer by giving not less than 3 months notice of his intention so to do.

If payment is effected by electronic funds transfer the employer shall meet the cost of one deposit and one withdrawal per pay period.

20. RIGHT OF ENTRY OF UNION OFFICIALS

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

21. SATURDAY WORK

Employees required to work on a Saturday shall be paid at the rate of time and a half for the first 3 hours and double time thereafter.

22. SHIFT WORK

- (a) Definitions

For the purposes of this clause the following definitions apply:

- (i) '**Afternoon Shift**' shall mean a shift finishing at or before midnight.
- (ii) '**Night Shift**' shall mean a shift commencing at 10pm or later.

- (b) Shift Allowance

An employee engaged to work shift work shall be entitled to receive the following allowances:

- (i) Afternoon Shift - 15%;

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- (ii) Permanent Night Shift (ie a shift which does not rotate or alternate with either day and/or afternoon shift) - 30%;
- (iii) Rotating Night Shift - 15%.

The above allowances shall be in addition to the wage rates prescribed in Clause 8 - Wage Rates and shall not be subject to premium or penalty addition. Neither shall they be payable at any time at which an employee is entitled to be paid penalty rates for overtime, weekend work, holiday work or any other purpose.

23. SHOP STEWARDS

An employee appointed shop steward in the factory or premises in which he is employed, upon notification thereof to his employer, be recognized as the accredited representative of the Union to which he belongs, and he shall be allowed the necessary time during working hours to interview the employer or employees on union business.

24. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
 - (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, where practicable before the normal start time inform the employer of his inability to attend for work and as far as may be practicable state the nature of the illness and the estimated duration of absence;
 - (iii) he shall prove to the satisfaction of the employer or in the event of a dispute, the Secretary for Labour, that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year to sick leave credit in excess of seventy-six hours of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.
- (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.

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- (c) An employer shall not be required to make any payments 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.

25. SUNDAY WORK

Employees required to work on Sundays shall be paid at the rate of double time.

26. SUPERANNUATION

- (a) Definitions

'Tasplan' means the Tasplan Fund established by Trust Deed and Articles on 24 March 1987.

'Approved Fund' means a superannuation fund which is established in accordance with the Operational Standards for Occupational Superannuation Funds and has received preliminary listing from the office of the Occupational Superannuation Commissioner - Interim Group.

'Union' means the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch.

'Eligible Employee' means a full-time, part-time or casual employee who is employed under a classification of the Leather, Canvas and Sheet Plastic Fabrication Award and who has completed one calendar month's service with the employer.

'Employer' means an employer bound by the terms of the Leather, Canvas and Sheet Plastic Fabrication Award.

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

- (b) Fund

(i) For the purpose of this award contributions made by the employer in accordance with the provisions of subclause (d) - Employer Contributions, shall be paid to the Treasurer of Tasplan.

(ii) An employer bound by this clause shall become party to Tasplan upon the acceptance of the Trustees of that scheme of an application to become a participating employer of Tasplan, duly signed and executed by that employer.

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(c) Eligibility for Membership

- (i) An employee shall become eligible for membership of the approved Superannuation Fund on the first entry date which occurs after the employee has completed one calendar months continuous service with the employer. The employee having completed the one months waiting period shall be eligible to have contributions paid to the Fund subject to subclause (d) - Employer Contributions, from the date of engagement with the employer.
- (ii) An employee shall be enrolled in the approved Superannuation Fund upon the acceptance of the Administrator of the Fund of a membership application form and shall be deemed to be a member of the scheme from his or her entry date as prescribed in paragraph (i) herein.
- (iii) Notwithstanding the provisions contained in paragraph (i) and (ii) herein, an employee who is a member of an Approved Fund and was having contributions paid in accordance with this clause at his or her previous place of employment shall continue to have contributions paid on his or her behalf from the date of commencing employment with the current employer.

(d) Employer Contributions

- (i) Subject to the rules of the Fund, and paragraph (iii) herein, an employer shall contribute to the Fund in respect of each employee who is a member of the Fund an amount at the rate of nine per cent of ordinary time earnings for each complete week employed. This calculation shall be based on the ordinary time worked by an employee in any week and shall exclude work performed and paid as overtime.

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

- (ii) Subject to paragraph (i) herein an eligible employee shall have a minimum contribution per week paid into the Fund of \$1.41.
- (iii) Contributions shall be made for each calendar month an employee is a member of the scheme.
- (iv) An employer shall not be required to contribute during any periods of unpaid leave. Furthermore, an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.
- (v) Pro rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.

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(e) Employee Contributions

Subject to the rules of the Fund, employees who may wish to make contributions to the Fund additional to those being paid pursuant to subclause (d) - Employer Contributions herein, shall be so entitled. Such employees may either forward their own contribution directly to the Fund Administrators or, where it is practicable to do so, authorise the employer to pay into the Fund from the employees' wages, amounts specified by the employer subject to the amount of contribution being expressed in whole dollars and any adjustment to the level of contribution being subject to 3 months notice in writing from the employee to the employer or such lesser period as they may both otherwise agree.

(f) Cessation of Contributions

An employee's eligibility for contributions to the Fund will cease on the last day of employment with the employer and the employer shall not make any contributions to the Fund in respect of any period beyond that last day of employment.

Tim Abey
COMMISSIONER

31 August 2004