

**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s.23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T13471 of 2009)

**Private and Public Sector Awards**

**FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case 2009 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$12.00 per week - wage related allowances to be increased by 1.9% – meal allowance increased to \$15.40 - Supported wage increased to \$71.00 - State Minimum Wage rate determined at \$558.10 - s.35(1)(b) – operative date ffpp 1 August 2009 - Wage Fixing Principles set aside in part**

**MISCELLANEOUS WORKERS AWARD**

**ORDER -**

**No. 1 of 2009  
(Consolidated)**

**AMEND THE MISCELLANEOUS WORKERS AWARD BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:**

## **1. TITLE**

This award shall be known as the "Miscellaneous Workers Award".

## **2. SCOPE**

- (a) Subject to the exceptions and modifications prescribed elsewhere this award shall apply to the work performed by private employees classified as follows:
1. Caretaker
  2. Janitor
  3. General Attendant
  4. Lift Attendant
  5. Tea Attendant
  6. Cleaner
  7. Groundsman or Yardsman
  8. Library Attendant
  9. Vehicle Cleaner
  10. Domestic
- (b) This award shall not apply to a private employee who is engaged within an industry where an award or registered Industrial Agreement applies containing a classification of employee embracing the same or similar work as envisaged by the scope and definitions set out in this award.
- (c) This award shall not have any application to employees of employers in the industry of mining. For the purposes of this exclusion "mine" or "mining" shall have the same meaning as similar expressions contained in the *Mines Inspection Act 1968*.

## **3. ARRANGEMENT**

<u>Subject Matter</u>	<u>Clause No.</u>	<u>Page No.</u>
Title	1	2
Scope	2	2
Arrangement	3	2
Date of Operation	4	4
Supersession and Savings	5	4
Parties and Persons Bound	6	4
Definitions	7	5
Wage Rates	8	14

**CONDITIONS OF EMPLOYMENT - DIVISION A - EMPLOYEES ENGAGED IN  
ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATIONS OF  
CARETAKER, JANITOR, GENERAL ATTENDANT, LIFT ATTENDANT, TEA  
ATTENDANT, CLEANER, GROUNDSMAN OR YARDMAN, VEHICLE CLEANER  
AND DOMESTIC**

<u>Subject Matter</u>	<u>Clause No.</u>	<u>Page No.</u>
Allowances	9	21
Annual Leave	10	21
Bereavement Leave	11	25
Caretakers or Janitors	12	26
Casual and Part-time Employees	13	26
Consultative Procedures	14	26
Contract of Employment	15	27
Enterprise Flexibility	16	28
Holidays with Pay	17	29
Hours of Work	18	29
Mixed Functions	19	33
Overtime	20	34
Parental Leave	21	35
Payment of Wages	22	44
Personal Leave	23	44
Protective Clothing	24	47
Reference of Disputes	25	48
Relationship to the National Training Wage (Tasmanian Private Sector) Award	26	48
Right of Entry	27	48
Saturday, Sunday and Holiday Work	28	48
Savings	29	49
Shop Stewards	30	49
Superannuation	31	49
Technological Change	32	52

**CONDITIONS OF EMPLOYMENT - DIVISION B - EMPLOYEES ENGAGED  
IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATION OF  
LIBRARY ATTENDANT**

<u>Subject Matter</u>	<u>Clause No.</u>	<u>Page No.</u>
General Conditions	33	52
Hours of Work	34	53
Minimum Engagement	35	57
Overtime	36	57

#### **4. DATE OF OPERATION**

This award shall be operative from the first full pay period commencing on or after 1 August 2009.

#### **5. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes Miscellaneous Workers Award No. 1 of 2008 (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 private employers (whether members of a Registered Organisation or not) who employ persons in the occupations specified in Clause 2 - Scope;
- (b) all private employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the occupations specified in Clause 2 - Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:  
  
the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:
  - (i) the Tasmanian Chamber of Commerce and Industry Limited; and
  - (ii) Australian Retailers Association - Tasmania Division.

## **7. DEFINITIONS**

### **FOR THE PURPOSES OF ALL DIVISIONS:**

**'Part-time employee'** is one engaged to regularly work for less hours per day or week than those prescribed for full-time employees.

**'Casual employee'** means any person who is employed on a casual basis and includes any person who is employed for a period not exceeding five days at any one time, and shall not include an employee as defined in subclause (a) hereof.

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

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

Nothing in this award shall be taken to imply that an employee cannot be engaged to carry out work covered by more than one of the occupations as specified in Clause 2 - Scope.

### **FOR THE PURPOSES ONLY OF DIVISION A - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATIONS OF CARETAKER, JANITOR, GENERAL ATTENDANT, LIFT ATTENDANT, TEA ATTENDANT, CLEANER, GROUNDSMAN OR YARDMAN, VEHICLE CLEANER AND DOMESTIC:**

**'Level 1 employee' - (Wage relativity to Level 3 employee = 87.4%)**

(a) Point of Entry

A new employee or adult employee previously engaged as a junior in one of the occupations of vehicle cleaner, domestic or general attendant.

(b) Induction Programme

A new employee at this level may undertake an internal induction programme which may include information on the enterprise, conditions of employment, introduction to other workers, training and career path opportunities, occupational health and safety, quality control, work and documentation procedures, personal presentation and use and care of machinery and/or equipment where relevant.

(c) Tasks/Duties/Responsibilities

An employee may be engaged in at least one of the following occupational groups:

**GROUP A:**

Occupations of Lift Attendant, Tea Attendant, Cleaner, Groundsman or Yardman, Vehicle Cleaner or Domestic

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform are the following:

- Cleaning of buildings and properties.
- Cleaning of motor vehicles, including vehicles for hire.
- Household duties including cleaning, laundering, ironing, cooking and childminding;
- Maintenance of premises, grounds and/or general surroundings;
- Operation and attendance of lifts;
- Tea Attendance.

**GROUP B:**

A new employee with less than 4 weeks employment in the occupation of General Attendant, Utility Officer and/or Caretaker or Janitor

Subject to the provisions of Clause 15 - Contract of Employment, subclause (c) thereof, an employee in this occupational group shall remain at this level for a maximum employment period of 4 weeks.

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform during this initial 4 weeks of employment are the following:

- Attend and protect premises and surrounds to ensure their good order and convenient use including their cleaning and upkeep;
- General securing of premises and surrounds;
- Assist the public in the use of premises or facilities;
- General maintenance and handyman duties additionally maintaining appearance of buildings and grounds;
- Taking of messages.

(d) Promotional Criteria

With the exception of Group B occupations in this definition an employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable progression to the next level as a position becomes available.

**'Level 2 employee' - (Wage relativity to Level 3 employee = 92.4%)**

(a) Point of Entry

- (i) Level 1 employee who satisfies the promotional criteria of that level or, in the case of an employee engaged under Group B - Occupations of Level 1, has satisfactorily completed 4 weeks of employment.
- (ii) Completion of required training module.

(b) Tasks/Duties/Responsibilities

An employee may be engaged in one of the following occupational groups:

**GROUP A:**

Occupations of Lift Attendant, Tea Attendant, Cleaner, Groundsman or Yardman, Vehicle Cleaner of Domestic

An employee at this level shall utilise the skills of a Level 1 employee in occupation Group A and in addition utilise specialist skills. Indicative of the tasks/duties and responsibilities an employee may be required to perform at this level and in this group of occupations include the following:

- Ordering and receiving of supplies and materials in connection with the cleaning of building and properties and/or motor vehicles (including vehicles for hire);
- Specialised cleaning of carpet, upholstery and furnishings using hot water extraction machines or shampooing machines requiring advanced operational skills;
- Steam and pressure cleaning of buildings using mechanical machines emitting steam under pressure requiring advanced operational skills;
- Window cleaning from a suspended apparatus.
- General repairs and renovation, not requiring trade qualifications for their performance, in the maintenance of premises, grounds and/or general surroundings.

## **GROUP B:**

An employee with at least 4 weeks employment in the occupations of General Attendant, Utility officer and/or Caretaker or Janitor

Indicative of the tasks/duties and responsibilities at this level and in this group of occupations an employee may be required to perform are the following:

- Attend and protect premises and surrounds to ensure their good order and convenient use including their cleaning and upkeep;
- General securing of premises and surrounds;
- Assist the public in the use of premises or facilities;
- General maintenance and handyman duties and may, in addition, include maintaining the appearance of buildings and grounds;
- Taking of messages.

### (c) Promotional Criteria

An employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable progression to the next level as a position becomes available.

## **'Level 3 Employee' - (Wage relativity = 100%)**

### (a) Point of Entry

- (i) Level 2 employee.
- (ii) Completion of required training module.

### (b) General

An employee who utilises the skills required of the Level 2 definition but at a more advanced level and in addition is appointed by the employer as the principal supervisor of employees at definition Levels 1 and 2.

### (c) Tasks/Duties/Responsibilities

In addition to the tasks of a Level 2 employee as defined, the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- Use of a well developed level of interpersonal and communicative skills;
- Exercises discretion within the scope of this level;



- Coordination of other employees at Levels 1 and 2;
- Supervises, directs and guides other employees at Levels 1 and 2 and assists in the provision of training and induction;
- Specialised maintenance duties that may require the holding of a trades certificate, including repairs to property, premises and maintenance of grounds and surrounds;
- Maintenance of all records and administrative tasks incidental to main duties.

**FOR THE PURPOSES ONLY OF DIVISION B - EMPLOYEES ENGAGED IN  
ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATION OF LIBRARY  
ATTENDANT**

**'Library Attendant Level 1'- (Wage relativity to Library Supervisor Level 4 = 78%)**

(a) Point of Entry

A new employee or adult employee with less than 4 weeks employment as a library attendant under this award.

(b) General

An employee remains in this position for up to 152 working hours during which time the employee shall undertake induction training to enable the employee to progress to the next grade subject to the satisfactory completion of the training programme.

(c) Training Programme

Induction training shall be provided as on-the-job training and may include information on the enterprise, conditions of employment, introduction to fellow workers, training and career path opportunities, work and documentation procedures, occupational health and safety, stock control procedures, liaison with industry representatives, familiarisation with security arrangements, basic operation of home viewing equipment and familiarisation with the operation of a video outlet and/or library.

An employee at this level performs routine duties to their level of training under general or direct supervision. Indicative of the tasks an employee at this level may be required to perform include the following:

- Setting up of displays;
- Liaison with customers and industry representatives under supervision;
- cleaning;

- basic keyboard operation and basic operation of computer software programmes under supervision;
- unpacking and packing of stock and maintenance of relevant records;
- presentation and maintenance of library stock;
- transaction of money at the point of sale or hire under supervision;

(d) Promotional Criteria

An employee remains at this level for a period of 4 weeks employment undertaking structured training and on the satisfactory completion thereof shall progress to the next level.

**'Library Attendant Level 2' - (Wage relativity to Library Supervisor Level 4 = 87.4%)**

(a) Point of Entry

- (i) Satisfactory completion of 4 weeks (152 hours) employment inclusive of training at Library Attendant Level 1.
- (ii) An adult employee with more than 4 weeks employment experience as a Junior Library Attendant.
- (iii) Demonstrated and proven skills enabling the employee to satisfactorily perform the tasks of this level.

(b) Tasks/Duties/Responsibilities

An employee at this level shall perform all the tasks/duties of a Library Attendant Level 1 and in addition the indicative tasks/duties/responsibilities an employee at this level may perform are the following:

- liaison with customers including minor customer complaints and problems;
- transaction of money at the point of sale or hire and processing and balancing of all monies;
- basic computer and keyboard operation;
- basic knowledge of movies and technical trade journals;
- basic operation of home viewing equipment;
- basic arithmetical calculations with accuracy;

- cleaning and incidental repairs, including library stock;
- setting up and presentation;
- receipt and despatch of stock and maintenance of necessary records;
- packing and unpacking and maintaining stock on display;
- security of premises under supervision;
- basic and incidental maintenance;
- control and supervise access of customers to library;
- demonstrate good verbal skills.

(c) Promotional Criteria

An employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable progression to the next level upon being required to perform within the criteria of the next level.

**'Library Attendant Level 3'- (Wage relativity to Library Supervisor Level 4 = 92.4%)**

(a) Point of Entry

- (i) Library Attendant Level 2;
- (ii) Completion of required training module.

(b) General

An employee at this level will utilise the skills of a Library Attendant Level 2 at a higher level of skill and responsibility and may include responsibility for the training and supervision of Level 1 and 2 employees within a work section.

An employee at this level shall also have a working knowledge of computers and computer programmes.

(c) Tasks/Duties/Responsibilities

In addition to the tasks of a Library Attendant Level 2 the indicative tasks, duties and responsibilities which an employee at this level may perform are the following:

- keyboard and computer skills at a more advanced level than Level 2;

- reasonable working knowledge of movies and trade and technical journals to enable communication with distributors and customers on these matters;
- general knowledge of the operation of home viewing equipment and understanding of basic fault finding/correction;
- general knowledge of general maintenance and basic repairs;
- more advanced verbal skills than Level 2 employees;
- design and layout of promotions and presentations;
- observe and undertake procedures for security of premises and oversee Level 1 and 2 employees in securing premises;
- receipt of orders and checking and dealing with problems arising therefrom;
- packing/unpacking of stock and maintaining necessary records and dealing with problems arising therefrom;
- controlling access and supervision of customers to library materials and resolving customer problems and complaints of a minor nature;
- arithmetic skills at a more advanced level than Level 2;
- processing and balancing of all monies up to the banking stage.

(d) Promotional Criteria

An employee remains at this level until capable of effectively performing, through assessment or appropriate certification, the tasks required of this function so as to enable them to progress to the next level as a position becomes available.

**'Library Supervisor Level 4' - (Relativity 100%)**

(a) Point of Entry

- (i) Library Attendant Level 3;
- (ii) Completion of required training modules.

(b) General

An employee at this level shall utilise skills and exercise responsibility at a level higher than that required of a Library Attendant Level 3 and in addition shall:

- understand and apply quality control techniques;
- exercise advanced interpersonal communication skills;

- exercise discretion within the scope of this Level;
- exercise advanced keyboard with computer skills;
- perform work under limited or general supervision either individually or within a team environment;
- is appointed by the employer to supervise employees at Levels 1 to 3 and generally supervises the Library.

(c) Tasks/Duties/Responsibilities

In addition to the tasks of a Library Attendant Level 3 the indicative tasks, duties and responsibilities an employee at this level may perform are the following:

- customer liaison and dealing with and resolving complaints and problems;
- responsibility for stock controls;
- purchase and review of stock under management directions;
- training and induction of Level 1 to 3 employees;
- supervision of Level 1 to 3 employees;
- coordination of business promotions and associated advertising of stock;
- responsibility for the control of monies at the point of sale, including balancing and banking;
- responsibility for presentation and maintenance of stock;
- more advanced working knowledge of computer software programmes than a Library Attendant Level 3;
- may have advanced knowledge of repair, maintenance and operation of home viewing equipment including video cassettes and able to deal with related customer enquiries;
- resolution of basic computer errors.

**8. WAGE RATES**

**DIVISION A - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATIONS OF CARETAKER, JANITOR, GENERAL ATTENDANT, LIFT ATTENDANT, TEA ATTENDANT, CLEANER, GROUNDSMAN OR YARDMAN, VEHICLE CLEANER AND DOMESTIC**

Adults

Subject to Division C, subclause (a) Junior - Vehicle Cleaner, Domestic or General Attendant, the minimum weekly wage rate for an employee classified hereunder shall be the weekly wage rate assigned to that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Level 1 Employee (as defined)	87.4	364.60	232.70	597.30
Level 2 Employee (as defined)	92.4	385.50	232.70	618.20
Level 3 Employee (as defined)	100	417.20	234.70	651.90

**DIVISION B - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATION OF LIBRARY ATTENDANT**

Adults

The minimum weekly wage rate for an adult employee classified hereunder shall be the weekly wage rate assigned to that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Library Attendant Level 1 (as defined)	78	325.40	232.70	558.10
Library Attendant Level 2 (as defined)	87.4	364.60	232.70	597.30
Library Attendant Level 3 (as defined)	92.4	385.50	232.70	618.20
Library Supervisor Level 4 (as defined)	100	417.20	234.70	651.90

### DIVISION C - JUNIORS

(a) Junior - Vehicle Cleaner, Domestic or General Attendant

A junior employee who is engaged under the occupation of Vehicle Cleaner, Domestic or General Attendant shall in lieu of the weekly wage rate provided in Division A, subclause (a) - Adults be paid the following percentage of the weekly wage rate prescribed for a Level 1 Employee in Division A, subclause (a) - Adults until the employee attains the age of 21.

	%
At 16 years of age	55
At 17 years of age	65
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95
At 21 years of age	100

**PROVIDED** that where more than one employee of this class is employed, no more than 50 per cent of those employees shall be engaged and paid as junior employees.

**PROVIDED FURTHER** that an employee engaged as a general attendant prior to 1 August 1992 shall be entitled to the rate of pay prescribed for an adult employee.

(b) Junior - Library Attendant

An employee classified as a junior library attendant shall be paid the following percentage of the total weekly wage prescribed for classification Library Attendant Level 2 in Division B, subclause (a) - Adults.

	%
At 16 years of age	55
At 17 years of age	65
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95
At 21 years of age	100

**PROVIDED** that where more than one employee of this class is employed, no more than 50 per cent of those employees shall be employed and paid as junior employees.

## DIVISION D - SUPPORTED WAGE SYSTEM

### (a) Eligibility criteria

Subject to this division an employer may engage employees at a supported wage rate (as set out in subclause (c) of this division) 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 division 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 division 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 s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

### (b) For the purposes of this division:

- (i) **"Supported Wage System"** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **"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.
- (iii) **"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.
- (iv) **"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.

### (c) Supported wage rates

Employees to whom this division 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:



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 \$71 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 division, 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.

(e) Lodgement 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.

(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 division 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 division 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 division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 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 \$71 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 subclause (c) hereof.

#### **DIVISION E – 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 Division D - Supported Wage System is \$558.10 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i)

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2009 State Wage Case Decision (T13471 of 2009) and all previous safety net and state wage case adjustments.

## **9. ALLOWANCES**

### (a) Leading Hand Allowance

An employee who is appointed by the employer as a leading hand shall be paid per week the following applicable allowance in addition to the classification rate:

	Amount per Week \$
(i) In charge of 5 or less employees	17.80
(ii) In charge of 6 to 10 employees	23.00
(iii) In charge of more than 10 employees	29.40

**PROVIDED** that the leading hand allowances prescribed by this subclause shall not be paid to employees engaged as a Level 3 employee (as defined) of Division A or Library Supervisor Level 4 (as defined) of Division B as prescribed in Clause 7 - Definitions.

### (b) Excess Fares Allowance

Employees engaged on any day or shift which is worked in two periods shall be paid an excess fares allowance of \$2.50 per day.

### (c) First Aid Allowance

Where an employee is a qualified first aid attendant and is authorised to carry out the duties of a qualified first aid attendant, the employee shall be paid an additional amount of \$8.40 per week.

### (d) Meal Allowance

An employee who is entitled to a meal allowance pursuant to Clause 20 - Overtime of Division A and Clause 37 - Overtime of Division B shall be paid an amount of \$15.40 for each occasion when the allowance is payable.

## **10. ANNUAL LEAVE**

### (a) Period of Leave

A period of 28 consecutive days leave, exclusive of days prescribed as holidays in Clause 17 - Holidays with Pay of this award, shall be allowed annually to an employee other than a casual employee (as defined) after 12 months continuous service (less the period of annual leave).

(b) Calculation of Continuous Service

- (i) 12 months continuous service, for the purposes of this award shall mean 12 months from the commencement of employment. Such 12 months shall not be affected by the number of hours worked each week.
- (ii) Continuous service shall not be deemed to have been broken because of:
  - (1) absences of up to 91 days resulting from accidents, or illnesses which are covered by medical certificates, in accordance with Clause 23 - Personal Leave hereof;
  - (2) absences of up to one month for any cause for which leave has been granted by the employer.

(c) Time of Taking Leave

Annual leave shall be taken at a time mutually agreed upon by the employer and the employee and, in the absence of agreement, at a time fixed by the employer after at least one month's notice to the employee and within three months of the date when the annual leave became due.

Annual leave shall be taken within 12 months from the date when the right to annual leave accrued.

(d) Broken Leave

Annual leave shall be taken in one consecutive period or if the employer and employee agree, in two or more periods provided that:

- (i) one period shall not be less than 7 consecutive days i.e. 5 working days;
- (ii) there shall be a maximum of 5 single day periods in any 12 months.

(e) Payment for Period of Leave

- (i) Subject to the provisions of paragraph (ii) of this subclause, an employee before going on leave shall be paid the amount of wages 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.
- (ii) In the event of an employee's weekly hours of work having varied in the period during which the annual leave has accrued the number of hours per week on which leave payments are calculated shall be the average number of hours per week worked during the said period of accrual.

(f) Annual Leave Loading

- (i) In addition to the amount payable in accordance with subclause (e) hereof, an employee shall be entitled to be paid a leave loading equivalent to 17.5 per cent of his ordinary annual leave payment.
- (ii) An employee who terminates his services or is dismissed in accordance with the provisions of Clause 15 - Contract of Employment, subclause (e) shall not be entitled to any payment for leave loading on pro rata leave payable on termination.
- (iii) An employee with twelve months continuous service whose employment is terminated by the employer through no fault of the employee, shall, subject to (i) hereof be entitled to be paid pro rata leave loading.
- (iv) An employee with less than 12 months service whose employment is terminated by the employer for reasons other than those set out in Clause 15 - Contract of Employment, subclause (e) shall be entitled to be paid pro rata leave loading.

(g) Leave Allowed Before Due Date

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

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/12 of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 17 - Holidays With Pay hereof.

(h) Payment in Lieu Prohibited

Payment in lieu of annual leave shall not be made by an employer nor accepted by an employee except in accordance with all the requirements of this clause.

- (i) An employee shall not work for any other employer covered by this award during the period he or she is on paid annual leave.

(j) Annual Leave Record

Every employer shall keep or cause to be kept an annual leave record showing the date of commencement of employment, the date on which the last leave became due, and the date on which the last leave was taken.

(k) Proportionate Leave on termination of Service

Where an employee terminates his employment, or his employment is terminated by the employer before the expiration of any 12 monthly qualifying period, payment shall be made on the basis of: -

4/52 of a week's wages for each completed week of continuous service.

(l) Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences provided that:

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

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

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

(iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.

(v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(vi) An employer shall record these short term annual leave arrangements in the time and wages book, pursuant to Regulation 25 of the Industrial Relations Regulations 1993.



## **11. BEREAVEMENT LEAVE**

### (a) Paid Leave Entitlement

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, 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 FURTHER** 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 purposes 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.

### (b) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

### (c) Casual Employees

(i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

(ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees are not entitled to any payment for the period of non-attendance.

(iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **12. CARETAKERS OR JANITORS**

- (a) Caretakers and/or Janitors may be called upon to perform lift and boiler attendant duties as part of their duties.
- (b) In addition to the weekly rate prescribed in Clause 8 - Wage Rates, resident employees classified in accordance with this award shall receive free living quarters, light, power and fuel.

## **13. CASUAL AND PART-TIME EMPLOYEES**

- (a) A part-time employee (as defined) shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs, plus 15 per cent.
- (b) A casual employee (as defined) shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs, plus 33 1/3 per cent.
- (c) A casual employee (as defined) shall be excluded from Clause 10 - Annual Leave and Clause 23 - Personal Leave of this award.
- (d) Hourly rates for casual employees (as defined) and part-time employees (as defined) shall be calculated to the nearest whole cent, fractions of less than 0.5 cents being disregarded.
- (e) The minimum start for casual employees (as defined) and part time employees (as defined) shall be two hours.

**PROVIDED** that in exceptional circumstances the employer, with the agreement in writing from the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, may engage employees for a lesser number of hours than two hours as prescribed.

- (f) Part-time employees (as defined) may agree with their employer that their weekly hours be reduced in proportion to the reduction in ordinary hours occurring for full time employees. Where such agreement is made the provisions of Clause 18 - Hours of Work shall apply.

## **14. CONSULTATIVE PROCEDURES**

- (a) The parties to this award are committed to cooperating positively to increase the efficiency, productivity and competitiveness of the establishments engaging employees in occupations covered by Clause 2 - Scope to enhance the career opportunities and job security of these employees.
- (b) Subject to the provisions of any other awards regulating employment in the enterprise each enterprise shall establish a consultative mechanism and procedures

appropriate to the size, structure and needs of that enterprise. Measures raised by the employer, employees and the union for consideration with the objectives of subclause (a) hereof shall be processed through that consultative mechanism and procedures.

## **15. CONTRACT OF EMPLOYMENT**

- (a) Except in the case of casual employees (as defined), employment under this award shall be by the week.
- (b) Casual employees (as defined) shall be engaged by the hour.
- (c) Except in the case of casual employees (as defined), employment may be terminated by the giving of one week's notice by either party, or the payment or forfeiture of one week's wages as the case may be.

**PROVIDED** that during the first four weeks of employment the employment may be terminated by the giving of one hour's notice by either party or by the payment or forfeiture of one hour's pay as the case may be.

- (d) Casual employment may be terminated by one hour's notice.
- (e) Nothing in this clause shall limit the right of the employer to instantly dismiss an employee for malingering, misconduct or neglect of duty.

**PROVIDED** that such malingering, misconduct or neglect of duty warrants instant dismissal, in which case wages shall be paid up to the time of dismissal only.

- (f)
  - (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote deskilling.
  - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
  - (iii) Any direction issued by an employer pursuant to paragraphs (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (g) The employer, in the event of misconduct, may suspend an employee without pay. The maximum period of suspension shall be one week. Should the employee not agree to the suspension the union may refer the matter to the Tasmanian Industrial Commission. If, upon examination, the Tasmanian Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term or rescind the suspension.

Prior to the suspension the matter shall be discussed with an official of the union or written notification shall be provided to the union. Where written means of notifying the employer's intentions is used, the employer shall not implement the suspension for twenty-four hours after the union would reasonably have been expected to receive such notification.

**PROVIDED** that in exceptional circumstances, the suspension may be implemented immediately.

## **16. ENTERPRISE FLEXIBILITY**

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be negotiated between the parties.
- (b) An agreement shall be subject to the following requirements:
  - (i) The majority of employees affected by the change must genuinely agree to the change.
  - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
  - (iv) The relevant union must be a party to the agreement.
- (c) An enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:
  - (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect of the agreement may be resolved.
- (d) An agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

## **17. HOLIDAYS WITH PAY**

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

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

**PROVIDED** that employees classified in accordance with this award shall observe the same Holidays with Pay as are observed by the majority of employees in the establishment in which they are employed.

**PROVIDED FURTHER** that where a holiday with pay as prescribed in subclause (a) hereof falls on a Saturday, Sunday or Rostered Day Off and is observed on a Saturday, Sunday or Rostered Day Off, the next week day not being a paid holiday shall be observed in lieu.

- (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) Payment to an employee for work performed on holidays with pay mentioned in subclause (a) hereof shall be at the rates prescribed elsewhere in this award.
- (d) Subject to agreement being reached between the employer and employee/s concerned, any of the holidays with pay mentioned in subclause (a) hereof may be worked at ordinary time and another working day substituted for the holiday concerned.

Such substitute day shall be paid in accordance with subclauses (b) or (c) of this clause.

- (e) Subject to agreement being reached between the employee and the employer, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate and taken at such time as is agreed.

## **18. HOURS OF WORK**

- (a) The ordinary hours of work shall be an average of 38 per week to be worked in not more than 8 hours on any day, but may be worked in one or two periods, on one of the following bases:

- (i) 38 hours within a work cycle not exceeding seven consecutive days; or
- (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
- (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.

In the case of resident caretakers, resident janitors or domestics such ordinary hours may be worked within six days.

(b) The method of implementation of the 38 hour week may be agreed to be any of the following:

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

At each site an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

**PROVIDED** that 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.

(c) Agreements reached on the method of implementation of the 38 hour working week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and be available for inspection in accordance with the provisions of the *Industrial Relations Act 1984*.

**PROVIDED** that in the absence of agreement on the implementation of the 38 hour week the procedure in Clause 25 - Reference of Disputes shall apply.

(d) Subject to subclauses (a) and (b) hereof, work may be performed at such hours as may be agreed upon by the employer and employees concerned and be worked on any day of the week including Saturdays and Sundays, in such a manner that ensures the employee shall have at least two consecutive days off duty in each week subject to Clause 20 - Overtime. These days off shall be in addition to any time off arising out of the method of working the 38 hour week.

- (e) In the case of day workers the ordinary hours of work prescribed by this clause shall extend from 6.30 am to 6.00 pm.
- (f) In the case of shift workers, the ordinary hours of work, prescribed by this clause, worked on any day Monday to Friday, shall be paid at the classification rate prescribed in Clause 8 - Wage Rates and in addition the following premium:
- (i) Payment of a premium of 15 per cent shall be made for a shift that commences before 6.30 am.
  - (ii) Payment of a premium of 15 per cent shall be made for a shift that commences or finishes after 6.00 pm.
  - (iii) Payment of a premium of 20 per cent shall be made for a shift that commences or finishes after 10.00 pm.
- (g) The premiums prescribed by subclause (f) hereof shall not apply where ordinary hours of work are performed on a Saturday, Sunday or holiday with pay. All ordinary time worked on these days shall be paid as follows:
- (i) **Saturday Work**  
 For ordinary hours performed between midnight on Friday and midnight on Saturday payment shall be at time and one half rates for such work.
  - (ii) **Sunday and Holidays with Pay**  
 A shift, the greater portion of which is worked on a Sunday or holiday with pay mentioned in subclause (a) hereof, shall be paid double time for work performed on a Sunday and double time and one half for work performed on a holiday with pay.
- (h) In no circumstances shall an employee be required to work a shift in more than 2 periods.
- PROVIDED** that where in a day, a shift is worked in two periods, a premium of 20 per cent shall be paid, plus an amount for excess fares as prescribed in Clause 9 - Allowances.
- PROVIDED FURTHER** that the period of a meal break shall be deemed a continuation of the shift.
- (i) If one of those periods prescribed in subclause (h) hereof extends beyond 4 hours, a paid crib break of 20 minutes shall be given in lieu of the meal interval entitlement of subclause (k) of this clause.
  - (j) It shall be prohibited for a shift worked in two periods to exceed a spread of 14 hours, or to commence before 6.00 am, or finish after 10.00 pm.

**PROVIDED** that the employer may, with the agreement of the union, vary this subclause.

- (k) Employees shall be allowed a meal period of not less than 30 minutes or more than one hour after completion of each 4 hours worked.
- (l) The employer and the majority of employees in the plant, business, section or sections concerned, may agree that the ordinary working hours are to exceed 8 hours on any day within the spread of ordinary hours as prescribed by this clause, thus enabling a week day off to be taken more frequently than would otherwise apply.
- (m) Substitute Days
  - (i) An employer, with agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with paragraphs (b)(iii) and (iv) 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 the event of an emergency situation.
  - (ii) Any individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.
- (n) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary working hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.



(v) An employer shall record these make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(o) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off provided that:

(i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.

(ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

(iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.

(iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiations referred to in paragraph (i) of this subclause.

(v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(vi) An employer shall record these RDO arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

## **19. MIXED FUNCTIONS**

An employee engaged for more than 3 hours in any one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for the whole of such day.

**PROVIDED** that where 3 hours or less are worked in the higher classification the employee shall be paid at the higher rate for the time so worked.

## **20. OVERTIME**

- (a) For all time worked outside of ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter. For the purpose of computation of overtime each day's work shall stand alone.
- (b) In the case of employees other than resident caretakers or janitors, if the hours worked in any day exceed eight, overtime at the appropriate rate shall be paid for all time worked in excess of 7 1/2 hours.
- (c) All overtime on a Saturday shall be paid at the rate of double time.
- (d) An employee required to work overtime for more than two hours after the usual time of ceasing work shall be paid a meal allowance for each such meal.
- (e) For the purpose of computing overtime, the ordinary rate of pay shall be determined by dividing the weekly rate by 38.
- (f)
  - (i) Subject to agreement being reached between the employer and the employee, time off may be allowed in lieu of payment for overtime worked. The amount of time off shall be calculated on the basis of the appropriate overtime rate and to be taken at such time as is agreed.
  - (ii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (g) Requirement to Work Reasonable Overtime
  - (i) Subject to paragraph (ii) of this subclause and subclause (f) of this clause, 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.

## **21. PARENTAL LEAVE**

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

### (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
  - (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or
  - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'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.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
  - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
  - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
  - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to

work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(vi) Special Maternity Leave

- (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

- (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
  - (1) that 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 on which the birth took place, and

- (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (3) a statutory declaration stating:
  - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (B) particulars of any period of maternity leave sought or taken by the mother, and
  - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
  - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a

requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.

- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) 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.

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if

the employee was still working full-time, in the position held prior to taking leave.

- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.
- (B) 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.

(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal 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.

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
  - (A) that the employee may work part-time;
  - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
  - (C) upon the classification applying to the work to be performed; and
  - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced 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.
- (4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award 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.

- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) 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 paragraph (vi).

(ix) 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.

(x) 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:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (4) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.

- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
  - (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
  - (iv) Unbroken service as a replacement employee shall be treated as continuous service.
  - (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for

consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

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

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

- (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
- (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (3) to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

## **22. PAYMENT OF WAGES**

The employer shall specify a time and place at which wages and other moneys are to be paid to the employees other than employees engaged for less than one week. The time so specified shall not be more than 48 hours from the time when such wages become due and shall not be later than Thursday in the week. Any employee who is not paid at the time so specified shall be deemed to be working during the time he is kept waiting. Casual employees (as defined) shall be paid within one hour of the termination of employment.

Payment may be made weekly or fortnightly as agreed between the employer and the employee.

Such payment shall be in cash, or by cheque or by direct bank deposit into an account nominated by the employee. The employer may determine the method of payment.

Where payment is to be made by cheque or direct bank deposit and such cheque is not met on presentation or such bank deposit is not made at the time specified, otherwise than in circumstances beyond the control of the employer waiting time shall be paid.

## **23. PERSONAL LEAVE**

The provisions of this clause apply to an employee, other than one engaged as a casual employee. The entitlements of casual employees are set out in subclause (i) – Casual Employees – Caring Responsibilities.

### (a) Definitions

The term '**immediate family**' includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

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

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
  - (1) due to personal illness or injury; or
  - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) An employee, other than one engaged as a casual employee, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, after one month's employment, subject to the following conditions:
- (iii) the employee shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of 2 weeks of ordinary working time;
- (iv) For the purposes of administering paragraph (iii) above an employer may within one month of this award coming into operation or within 2 weeks of the employee entering the employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence the employee has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (v) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (b)(iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal 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 personal leave prescribed in respect of that year.
- (vi) An employer shall not be required to make any payment in respect of accumulated personal 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.

(c) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

- (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

- (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

The employee shall, prior to the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence. Where such notification is not given, the employer shall be entitled to require as proof, in accordance with paragraph (iii) of this subclause, a certificate of a medical practitioner.

**PROVIDED** that where the employee is genuinely unable to give notification prior to the commencement of the shift the requirements of paragraph (iii) of this subclause shall apply.

(f) Evidence Supporting Claim

- (i) The employee shall provide proof that the employee was unable, on account of such illness or injury, to attend work on the day for which personal leave is claimed in the form of a sworn statutory declaration or a medical certificate provided by a qualified medical practitioner. In the case of absences of more than a single day an employer may request, prior to the employees return to work, as proof a medical certificate.
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(g) Personal Leave and Workers' Compensation

The employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation.

(h) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(i) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f), casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees are not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **24. PROTECTIVE CLOTHING**

- (a) Clean overalls, or coveralls shall be supplied where required within the normal course of duty to full time and part-time employees on the completion of one month's service. The initial issue shall be two pairs of overalls, or coveralls to be replaced when necessary.

**PROVIDED** that this subclause shall not apply to employees engaged as Library Attendants or Domestic.

- (b) Where employees are required to clean toilets, use detergents or injurious substances they shall be supplied with suitable protective gloves and suitable protective footwear.
- (c) Where an employer requires an employee to wear a uniform the employer shall initially provide the employee with two sets of uniforms at the employer's expense. The employee shall maintain and launder these uniforms at the employee's expense.

## **25. REFERENCE OF DISPUTES**

Any dispute concerning this award shall be settled in the following manner:

- (a) negotiation between the employer and the union Shop Steward;
- (b) where there is no Shop Steward available or where the dispute is not settled within the provisions of subclause (a) above, by negotiation between the union and the employer representative;
- (c) failing agreement being reached with the provisions of subclause (b) above, the union or the employer may refer the matter to the Tasmanian Industrial Commission for decision;
- (d) while this disputes procedure is being followed the status quo prevailing before the dispute arose shall be maintained.

## **26. RELATIONSHIP TO THE NATIONAL TRAINING WAGE (TASMANIAN PRIVATE SECTOR) AWARD**

A party to this award shall comply with the terms of the National Training Wage (Tasmanian Private Sector) Award, as varied, as though bound by Clause 6 of that award.

## **27. RIGHT OF ENTRY**

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

## **28. SATURDAY, SUNDAY AND HOLIDAY WORK**

- (a) Payment shall be at the rate of time and one half for all ordinary hours worked on a Saturday.
- (b) Payment shall be at the rate of double time for all work performed on a Sunday.
- (c) Payment shall be at the rate of double time and one half for work performed on a holiday as prescribed in Clause 17 - Holidays With Pay of this award.
- (d) Employees required to work on a Saturday, Sunday or a holiday with pay as prescribed in Clause 17 - Holidays with Pay of this award shall receive a minimum of 3 hours pay at the appropriate rate.

**PROVIDED** that in exceptional circumstances the employer, with the agreement in writing from the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch may engage employees for a lesser number of hours than three hours as prescribed.



- (e) Subject to agreement being reached between the employee and the employer, time off may be allowed in lieu of payment of penalties. The amount of time off shall be calculated on the basis of the appropriate penalty rate and taken at such time as is agreed.

## **29. SAVINGS**

- (a) Any employee in receipt of a rate of wage in excess of that herein prescribed shall not have his or her wages reduced as a result of this award.
- (b) An employer who at 12 April 1986 was not a member of a registered organisation bound by this award shall be exempt from the payment of overtime or other extraneous payments that might otherwise be payable as a consequence of the introduction of a 38-hour week from 12 April. This exemption shall have effect from the date that this award is gazetted.

## **30. SHOP STEWARDS**

An employee appointed steward or delegate in the shop, office or department in which the employee is employed shall, upon notification thereof to the employer, be recognised as the accredited representative of the union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees whom he/she represents.

**PROVIDED** that if the steward requests it, he/she may be accompanied at such interview by a union official.

## **31. SUPERANNUATION**

- (a) Definitions

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

**'Eligible Employee'** means a full-time, part-time or casual employee who is employed under a classification of the Miscellaneous Workers Award and who has completed one calendar months service with the employer.

**'Employer'** means an employer bound by the terms of the Miscellaneous Workers Award.

**'Ordinary Time Earnings'** means the award classification rate, overaward payments and shift loadings (where relevant).

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

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

(b) Fund

- (i) For the purpose of this award contributions made by employers in accordance with the provisions of subclause (d) - Employer Contributions of this clause shall be paid to the Treasurer of TASPLAN.
- (ii) All employers upon being bound by this award shall apply to and become party to TASPLAN and upon the acceptance of the Trustees of that scheme of an application to become a participating employer to TASPLAN, duly signed and executed by that employer, become a participating employer of TASPLAN.

(c) Eligibility for Membership

- (i) An employee having completed one calendar months continuous service with the employer shall be eligible from the first entry date which next occurs to have contributions paid to the Fund subject subclause (d) - Employer Contributions of this clause.
- (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 subclauses (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 the conditions identified elsewhere in this clause, contributions shall be paid by employers in respect of each eligible employee 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.
- (ii) Subject to subclause (i) herein an eligible employee shall have a minimum contribution per week paid into the Fund of \$1.40.

- (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.
- (vi) 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.

(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 employee 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.

(g) Exemptions

For the purpose of this award the following companies and organisations have been determined to be exempted from the use of TASPLAN and shall contribute to an "Approved Fund" as specified in this clause:

- (i) Northern Television (TNT9) Pty Ltd - Australian Retirement Fund (ARF).
- (ii) Dominic College - Archdiocese of Hobart Superannuation Fund.
- (iii) Webster Limited - Webster Superannuation Fund.
- (iv) Tasmanian Teachers Federation - Tasmanian Teachers Federation Staff Superannuation Fund.
- (v) Liquor, Hospitality and Miscellaneous Union of Australia - Tasmanian Branch - Federated Miscellaneous Workers Union Staff Superannuation Plan.

- (vi) Salamanca Arts Centre Inc. - The Eagle Retirement Fund.
- (vii) Centacare Tasmania – Catholic Superannuation Fund.
- (viii) Cosy Cabins – Commonwealth Life Superannuation Mastertrust.

### **32. TECHNOLOGICAL CHANGE**

Notwithstanding the provisions of Clause 15 - Contract of Employment hereof where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes, the employer terminates the employment of an employee who has been employed by him for the preceding 12 months, he shall give the employee 3 months' notice of the termination of his employment.

### **CONDITIONS OF EMPLOYMENT - DIVISION B - EMPLOYEES ENGAGED IN ACCORDANCE WITH CLAUSE 2 - SCOPE IN THE OCCUPATION OF LIBRARY ATTENDANT**

### **33. GENERAL CONDITIONS**

The provisions of:

- |         |      |  |
|---------|------|--|
| Clauses | 10 - | Annual Leave   |
|         | 11 - | Bereavement Leave  |
|         | 13 - | Casual and Part-time Employees   |
|         | 14 - | Consultative Procedures  |
|         | 15 - | Contract of Employment   |
|         | 16 - | Enterprise Flexibility   |
|         | 17 - | Holidays With Pay  |
|         | 19 - | Mixed Functions  |
|         | 21 - | Parental Leave   |
|         | 22 - | Payment of Wages   |
|         | 23 - | Personal Leave   |
|         | 24 - | Protective Clothing  |
|         | 25 - | Reference of Disputes  |
|         | 26 - | Relationship to the National Training Wage<br>(Tasmanian Private Sector) Award |
|         | 27 - | Right of Entry   |
|         | 29 - | Savings  |
|         | 30 - | Shop Stewards  |
|         | 31 - | Superannuation   |
|         | 32 - | Technological Change   |

of Division A shall also apply to employees in this division.

### **34. HOURS OF WORK**

- (a) The ordinary hours of work shall be an average of 38 per week to be worked in not more than 8 hours on any day, but may be worked in one or two periods, on one of the following bases:
- (i) 38 hours within a work cycle not exceeding seven consecutive days; or
  - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
  - (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
  - (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.
- (b) The method of implementation of the 38 hour week may be agreed to be any of the following:
- (i) by employees working less than 8 ordinary hours each day; or
  - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
  - (iii) by fixing one week day on which all employees will be off during a particular cycle; or
  - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

At each site an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

**PROVIDED** that 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.

- (c) Agreements reached on the method of implementation of the 38 hour working week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and be available for inspection in accordance with the provisions of the *Industrial Relations Act 1984*.

**PROVIDED** that in the absence of agreement on the implementation of the 38 hour week the procedure in Clause 25 - Reference of Disputes in Division A shall apply.

(d) Where an employee does not receive two consecutive days off duty in each seven days by nature of the duty roster, the employee must be paid, for all time worked until they are given two consecutive days off, at the overtime rate set out in Clause 37(a).

(e) Establishments Closing Before 9.00 pm

Where an establishment closes before 9.00pm on any day Monday to Friday inclusive all ordinary hours prescribed by this clause, worked between 6.30am and 6.00pm inclusive shall be paid at the ordinary time rate.

**PROVIDED** that all work performed outside of the ordinary hours prescribed by this clause between 6.30am and 6.00pm inclusive shall be paid at the rates prescribed by Clause 37 - Overtime.

All work performed outside the hours of 6.30am and 6.00pm inclusive shall be paid at the rate of double time.

(f) Establishments Closing at or after 9.00pm

Where an establishment closes at or after 9.00pm Monday to Friday inclusive, all ordinary hours prescribed by this clause, worked between 8.30am and 8.30pm inclusive shall be paid at the ordinary time rate.

**PROVIDED** that all work performed outside of the ordinary hours prescribed by this clause between 8.30am and 8.30pm inclusive, shall be paid at the overtime rates prescribed by Clause 37 - Overtime.

All work performed outside the hours of 8.30am and 8.30pm inclusive shall be paid at the rate of double time.

(g) Saturday, Sunday and Holidays with Pay

(i) Saturday

For all ordinary hours worked between midnight on Friday and midnight on Saturday payment shall be made at time and one half for such work.

(ii) Sundays and Holidays with Pay

For a shift, the greater portion of which is worked on a Sunday or a Holiday with Pay as prescribed in Clause 17 - Holidays with Pay, payment shall be made at the rate of double time for work performed on a Sunday and double time and one half for work performed on a holiday with pay.

**PROVIDED** that for overtime worked on a Sunday or holiday with pay as prescribed in Clause 17 - Holidays with Pay and subject to agreement being reached between the employee and employer, time off may be allowed in lieu

of payment. The amount of time off shall be calculated on the basis of the appropriate penalty rate and taken at such time as is agreed.

- (h) In no circumstances shall an employee be required to work a shift in more than two periods.

**PROVIDED** that where in a day a shift is worked in two periods a premium of 20% shall be paid, plus an amount for excess fares as prescribed in Clause 9 - Allowances.

**PROVIDED FURTHER** that the period of a meal break shall be deemed a continuation of the shift.

The premium prescribed by this subclause shall not be cumulative and shall be substituted by other penalties otherwise prescribed elsewhere in this clause.

- (i) If one of those periods prescribed in subclause (h) hereof extends beyond 4 hours, a paid crib break of 20 minutes shall be given in lieu of the meal interval entitlement of subclause (k) of this clause.
- (j) It shall be prohibited for a shift worked in two periods to exceed a spread of 14 hours, or to commence before 6.00 am, or finish after 10.00 pm.

**PROVIDED** that the employer may, with the agreement of the union (as defined), vary this subclause.

- (k) Employees shall be allowed a meal period of not less than 30 minutes or more than one hour after completion of each 4 hours worked.
- (l) The employer and the majority of employees concerned in the plant, business, section or sections concerned, may agree that the ordinary working hours are to exceed 8 hours on any day, thus enabling a work day off to be taken more frequently than would otherwise apply.
- (m) (i) An employer, with agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with paragraphs (b)(iii) and (iv) of this clause, for another day in the case of a break down in machinery or a failure or shortage of electric power or to meet the requirements of the business in an emergency.
- (ii) Any individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.

- (n) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary working hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
  - (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
  - (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
  - (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
  - (v) An employer shall record these make up time arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (o) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off provided that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.



- (vi) An employer shall record these RDO arrangements in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

### **35. MINIMUM ENGAGEMENT**

Employees required to work on a Saturday, Sunday or a holiday with pay as prescribed in Clause 17 - Holidays with Pay shall receive a minimum of 3 hours pay at the appropriate rate.

**PROVIDED** that in exceptional circumstances the employer, with agreement in writing from the union may engage employees for a lesser number of hours than three hours as prescribed.

### **36. OVERTIME**

- (a) Subject to subclauses (b) and (c) hereof for all time of duty outside of ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter.
- (b) For establishments closing before 9.00pm, all time of duty outside of 6.30am to 6.00pm Monday to Friday inclusive shall be paid at double time.
- (c) For establishments closing at or after 9.00 pm, all time of duty outside of 8.30am to 8.30pm Monday to Friday inclusive shall be paid at double time.
- (d) If the time of duty outside of ordinary hours exceeds eight, overtime at the appropriate rate shall be paid for all time worked in excess of 7 1/2 hours.
- (e) All overtime on a Saturday shall be paid at the rate of double time.
- (f) An employee required to work overtime for more than two hours after the usual time of ceasing work shall be paid a meal allowance for such meal.
- (g) For the purpose of computing overtime, the ordinary rate of pay shall be determined by dividing the weekly rate by 38.
- (h) (i) Subject to agreement being reached between the employee and employer, time off may be allowed in lieu of payment for overtime worked. The amount of time off shall be calculated on the basis of the appropriate rate and taken at such time as is agreed.

- (ii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

Tim Abey  
**COMMISSIONER**

4 August 2009