

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

**HORTICULTURISTS AWARD**

**ORDER BY CONSENT**

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

CLAUSES 8, 9, 17, 21, 35 AND 38 ARE VARIED AND THE AWARD IS CONSOLIDATED

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## **1. TITLE**

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

## **2. SCOPE**

This award is established in respect of the industry of landscape gardening.

## **3. ARRANGEMENT**

<b><u>Subject Matter</u></b>	<b><u>Clause No.</u></b>
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Allowances	9
Amenities	10
Annual Leave	11
Casual Employees	12
Compassionate Leave	13
Engagement	14
Existing Practices	15
Fares and Travelling	16
First Aid Equipment	17
Holidays With Pay	18
Hours	19
Loss of Clothing Due to Fire	20
Meal Interval and Allowance	21
Mixed Functions	22
Notice Boards	23
Notifying Casual Employee He is Not Wanted	24
Overtime	25
Parental Leave	26
Part A – Maternity leave	
Part B – Paternity Leave	
Part C – Adoption Leave	
Part D – Part-Time Work	
Payment of Wages	27
Preference to Unionists	28
Protective Clothing	29
Resolution of Disputes	30
Right of Entry	31

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

Saturday, Sunday and Public Holiday Work	32
Sick Leave	33
Smoko	34
Special Rates	35
Tools and Equipment	36
Wet Pay	37

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

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

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

This award incorporates and supersedes the Horticulturists Award No. 1 of 2003 (Consolidated)

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

#### **6. PARTIES AND PERSONS BOUND**

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

- (d) the following organisations of employers in respect of whom award interest has been determined:
  - (i) The Hop Producers' Association of Tasmania and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope;
  - (ii) The Retail Traders Association of Tasmania and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope; and
  - (iii) The Tasmanian Chamber of Commerce and Industry Limited.

**7. DEFINITIONS**

**'Horticultural Tradesman'** means a qualified landscape gardener or greenkeeper, who has successfully completed a recognised apprenticeship of not less than four years in a branch or branches of the horticulture trade.

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

**'Union'** means a registered organisation of employees listed in Clause 6 - Parties and Persons Bound of this award.

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

**8. WAGE RATES**

**1. HORTICULTURAL TRADESMAN**

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

Classification	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Horticultural Tradesman (as defined)	368.80	142.00	510.80

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## 2. APPRENTICES

The minimum weekly wage rates that may be paid to apprentices shall be the undermentioned percentages of the total weekly wage rate payable to a Horticultural Tradesman as prescribed in subclause 1 of this clause.

	%
1 <sup>st</sup> year	42
2 <sup>nd</sup> year	55
3 <sup>rd</sup> year	75
4 <sup>th</sup> year	88

## 3. GENERAL

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

Classification	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(i) Fork Lift Driver	334.00	142.00	476.00
(ii) Motor Lorry Driver	334.00	142.00	476.00
(iii) An employee having less than one month's continuous service with their present employer	298.70	142.00	440.70
(d) Leading hand, i.e. an employee who directs or supervises the work of:			
2 to 6 employees	\$14.30 per week extra		
7 to 10 employees	\$15.10 per week extra		
11 to 19 employees	\$23.40 per week extra		
20 or more employees	\$30.70 per week extra		

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

#### **4. JUNIOR EMPLOYEES - OTHER THAN APPRENTICES**

The minimum weekly wage rate that may be paid to junior employees shall be the undermentioned percentages of the adult rate for the classification upon which they are employed.

	Percentage of Adult Weekly Wage rate %
Under 16 years of age	45
16 to 17 years of age	50
17 to 18 years of age	60
18 years of age and over	100

#### **5. MINIMUM WAGE**

- (a) Notwithstanding the provisions of subclauses 1, 2 & 3 of this clause, no adult employee shall be paid less than the rate of \$323.10 per week.
- (b) **PROVIDED** that payments for overtime, special rates, holiday and weekend penalties, prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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

#### **6. PIECE-WORK**

Piece-work rates may be fixed by the employer and the employee at such rates approved by The Australian Workers' Union, Tasmania Branch as will enable the average employee working the ordinary hours prescribed herein to earn at least twelve and a half percent above the prescribed time rate. Such rates shall, when fixed, be paid in lieu of the said time rates.

#### **7. SUPPORTED WAGE SYSTEM**

- (a) Eligibility criteria

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

(d) Assessment of capacity

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

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

(e) Lodgment of assessment instrument

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

(f) Review of assessment

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



**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(g) Other terms and conditions of employment

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

(h) Workplace adjustment

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

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 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 \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

## **9. ALLOWANCES**

(a) Shift Allowance

All time worked outside of the hours prescribed in Clause 20 - Hours subclause (a) of this award shall have a shift loading of \$1.88 for each hour worked.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

The extra rates prescribed by this clause are payable only during the employees' ordinary working hours and are not cumulative on the penalty rates prescribed in Clause 25 - Overtime, of this award.

(b) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the *Industrial and Commercial Training Act 1985* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.60 per week.

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

(c) Motor Cycle and Bicycle Allowance

If the nature of the employment requires an employee, on the instructions of the employer, to use a motor cycle or bicycle in the course of his work, such motor cycle or bicycle being the property of the employee, he shall be paid accordingly \$1.95 per day with fuel supplied for the motor cycle and 80 cents per day for the use of the bicycle.

## **10. AMENITIES**

Employers shall provide for the use of their employees suitable washing facilities, change rooms, dining accommodation, and sanitary convenience (separate for the sexes where necessary).

Any dispute as to whether suitable amenities have been provided as aforesaid shall be referred to the Secretary for Labour whose decision shall be final.

## **11. ANNUAL LEAVE**

(a) Period of Leave.

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

(b) Payment in Lieu Prohibited.

Payment shall not be made or accepted in lieu of annual leave except as provided in subclause (c) of this clause.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(c) Proportionate Leave on Termination of Service

Where an employee lawfully leaves the employment or is dismissed (except for neglect of duty or misconduct) before the expiration of twelve months' service but on or after completing one month's service he or she shall be paid thirteen and one third hours for each completed month of continuous service.

(d) Payment for Period of Leave.

(i) Each employee before going on leave shall be paid at the rate at which the employee was ordinarily employed immediately prior to the commencement of the leave or the termination of the employment as the case may be.

In addition thereto, all employees, other than casual employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, subclause 5 - Minimum Wage, of this award.

(ii) Payment in the case of piece-work shall be at time rates.

(e) Annual Leave Exclusive of Public Holidays.

(i) Where any holiday prescribed by Clause 19 - Holidays with Pay of this award, falls within the period of an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

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

(f) Time of Taking Leave.

(i) The annual leave provided by this clause shall be allowed and shall be taken in one period or by agreement between the employer and employee in more than one period.

(ii) When the right to annual leave has accrued the employer shall give not less than one week's notice to the employee concerned of his intention to grant such leave.

(g) Calculation of Continuous Service.

For the purpose of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

## **12. CASUAL EMPLOYEES**

Casual employees shall be paid 20 per cent in addition to the rates prescribed for weekly employees. This payment shall be in lieu of annual leave, sick leave, and public holidays prescribed herein. Casual employees shall be paid at an hourly rate determined by applying to the appropriate weekly rate plus 20 per cent, the divisor 40.

## **13. COMPASSIONATE LEAVE**

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

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

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

## **14. ENGAGEMENT**

Employees (other than casual employees) shall be deemed to be hired by the week, subject however to the following:

- (a) an employee who absents himself from duty (public holidays as prescribed by Clause 19 - Holidays with Pay and sickness as prescribed by Clause 34 - Sick Leave of this award excepted) shall not be entitled to payment in respect of time of such absence;
- (b) employment shall be terminated by one week's notice given by either party, which notice may be given at any time, provided that the termination shall take effect at the end of the day's work, or by payment or forfeiture (as the case may be) of one week's wages. Nothing in this subclause shall prevent an employer dismissing an

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

employee for misconduct or neglect of duty in which case payment shall be made up to the time of dismissal only;

- (c) no employer shall terminate an employee's engagement merely for the purpose of depriving an employee of his or her right to payment for a public holiday specified in Clause 19 - Holidays with Pay of this award;
- (d) no employer shall enter into any contract for the carrying on of any of the operations or functions to which this award applies by any contract unless the contract contains a clause binding the contractor to pay to employees the rates and observe the conditions set out in this award in respect of the work contracted for, and unless a clause is inserted in any such contract to the effect that the employer can terminate the contract if there is any breach of the conditions referred to.

The employer shall assume responsibility to the extent of any monies due by him to the contractor for payment of all wages due by the contractor to employees for such work.

#### **15. EXISTING PRACTICES**

- (a) Nothing in this award shall be taken to reduce the wages of an employee who is at the date hereof in receipt of a wage in excess of that herein prescribed.
- (b) Employees working in any branch of the industry where the ordinary hours of employment are less than 40 per week at the date hereof shall not have their ordinary hours increased as a result of this award.

#### **16. FARES AND TRAVELLING**

When an employee is required to work away from his usual place of employment and is required to commence work at the normal time the employee shall be paid for all time in excess of the time normally spent travelling to and from work.

Where an employee is required to use his own vehicle to travel to work at a location in excess of the distance he would normally travel, he shall receive 24 cents per kilometre for each kilometre travelled, with a minimum payment of \$4.45 per day.

#### **17. FIRST AID EQUIPMENT**

A suitable first-aid kit shall be kept at all places of work, and a qualified first-aid man (if available) shall be appointed to take charge of first-aid equipment and to attend to any person injured during working hours. Such first-aid man to be paid \$1.75 per day in addition to his ordinary wages where there are more than 3 persons employed

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## **18. HOLIDAYS WITH PAY**

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

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

By agreement between any employer and his employees, other days may be substituted for the said days or anyone of them.

- (b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holiday, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed elsewhere in this award.
- (d) Employees who are employed on piece-work shall be paid a day's wages at time work rates for any of the aforementioned holidays when not required to work on any of such days or a day's wages at time work rates in addition to piece-work rates for work performed on any such day.
- (e) If any of the holidays mentioned in subclause (a) of this clause fall on a day other than a usual working day another day shall be allowed in lieu thereof.
- (f) Where consequent upon any visit to Australia by Her Majesty the Queen or any other member of the Royal Family a public holiday is proclaimed by the Governor-in-Council or otherwise gazetted by the Tasmanian Government under State Act throughout the State or part thereof and under the Tasmanian Industrial Commission such day shall within the defined locality be deemed to be a holiday for the purposes of this award.

## **19. HOURS**

- (a) The ordinary hours of work for day workers shall be 40 hours per week to be worked in 5 days of not more than 8 hours each, Monday to Friday inclusive, continuously (except for meal breaks) between the hours of 6.00am and 6.00pm.

**PROVIDED** that by agreement between the employer and employee, ordinary hours may be worked up to 10 hours per day and where such agreement has been reached it shall be reduced to writing. In no circumstances shall ordinary hours exceed 40 per week.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

- (b) The spread of hours or daily hours prescribed by subclause (a) of this clause may be altered as to some or all employees by agreement between the employer and employee concerned.
- (c) The hours worked outside of the hours prescribed by subclause (a) of this clause shall have a shift loading as prescribed in Clause 10 - Allowances, subclause (a) - Shift Allowance of this award for each hour worked.

The extra rate prescribed by this subclause is payable only during the employees ordinary working hours and not cumulative on penalty rates prescribed in Clause 26 - Overtime of this award.

## **20. LOSS OF CLOTHING DUE TO FIRE**

The employer shall be responsible up to a maximum of \$669.00 for an employee's clothing which may be destroyed by fire in a changing house or other shelter, provided that such destruction is not in any way caused by the employee's own act or neglect.

## **21. MEAL INTERVAL AND ALLOWANCE**

- (a) A meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.
- (b) An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$12.70.
- (c) An employee required to work through his customary meal break shall be paid at overtime rates until such time as the meal break is taken.

## **22. MIXED FUNCTIONS**

An employee engaged for 2 hours or more of one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day. If for less than 2 hours of one day he shall be paid the higher rate for the time so worked.

## **23. NOTICE BOARDS**

Each employer shall permit a notice board of reasonable dimensions to be erected in a prominent position on his plant so that it will be reasonably accessible to employees working under this award. Accredited union representatives shall be permitted to put on the notice board union notices, signed or countersigned by the representatives posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## **24. NOTIFYING CASUAL EMPLOYEE HE IS NOT WANTED**

If a casual employee is not informed before he leaves the job at the end of his day's work that he is not required to work on the next day and such employee attends for work and is not put to work on that day he shall be paid a minimum as for 4 hours. Provided that unless the unemployment is due to circumstances over which the employer has no control he shall be paid as for a full day's work.

## **25. OVERTIME**

Subject to subclause (a) of Clause 20 - Hours, all hours worked in excess of 8 hours on any one day Monday to Friday inclusive shall be paid at the rate of time and one half for the first 2 hours and double time thereafter.

## **26. PARENTAL LEAVE**

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

### **PART A - MATERNITY LEAVE**

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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



**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).
- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

(f) Transfer to a Safe Job

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

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

(g) Variation of Period of Maternity Leave

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

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

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

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

(h) Cancellation of Maternity Leave

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(i) Special Maternity Leave and Sick Leave

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

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

(j) Maternity Leave and Other Leave Entitlements

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

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

(m) Return to Work After Maternity Leave

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

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

(n) Replacement Employees

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

## **PART B - PATERNITY LEAVE**

- (a) Nature of leave

Paternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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

- (c) Eligibility for Paternity Leave

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

(d) Certification

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

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

(e) Notice Requirements

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

(f) Variation of Period of Paternity Leave

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

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

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

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

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

(i) Effect of Paternity Leave on Employment

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(j) Termination of Employment

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

(k) Return to Work after Paternity Leave.

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

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

(l) Replacement Employees

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



**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## **PART C - ADOPTION LEAVE**

### (a) Nature of Leave

Adoption leave is unpaid leave.

### (b) Definitions

For the purpose of this part:

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

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

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

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

**'Spouse'** includes a de facto spouse.

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

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

### (c) Eligibility

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

(d) Certification

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

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

(e) Notice Requirements

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

(l) Return to Work After Adoption Leave

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

(m) Replacement Employees

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

**PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

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

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

**'Spouse'** includes a de facto spouse.

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

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

(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

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

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

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

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

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

(i) Termination of Employment

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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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



**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

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

(m) Replacement Employees

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

**27. PAYMENT OF WAGES**

- (a) For weekly employees payment of wages shall be made at not longer than fortnightly intervals unless otherwise agreed to between an employer and his employee. An employee who is kept waiting for his pay longer than 15 minutes after the cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.
- (b) For casuals and piece-workers (unless otherwise mutually arranged) payment shall be made not later than 2 hours after the cessation of work. An employee who is kept waiting for his pay longer than 2 hours after cessation of work shall be paid at ordinary time work rates for all time he is so kept waiting for his pay.
- (c) The employer shall pay at any time, on the written signature of the employee, any obligatory contributions or donations out of the amount for the time being due to the employee.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

## **28. PREFERENCE TO UNIONISTS**

Preference of employment shall be given to financial members of The AWU-FIME Amalgamated Union, Tasmania Branch or where non-unionists apply for employment to those who give an undertaking to join the union when approached to do so by an accredited union representative.

## **29. PROTECTIVE CLOTHING**

- (a) If an employee is required to work in a wet place or in heavy rain he shall be provided with wet weather gear and suitable head covering so as to protect him from getting wet.
- (b) The employer shall supply to each employee on commencement 2 pairs of overalls and one pair of work boots.

Replacement of clothing and boots shall be on a fair wear and tear basis upon production of the unserviceable item.

- (c) The clothing shall remain the property of the employer and the current issue shall be returned to the employer on termination of employment or prior to the next issue.

## **30. RESOLUTION OF DISPUTES**

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

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

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

### **31. RIGHT OF ENTRY**

Right of entry for a duly accredited representative of The AWU-FIME Amalgamated Union, Tasmania Branch shall be in accordance with the provisions of section 77 of the *Industrial Relations Act 1984*.

### **32. SATURDAY, SUNDAY AND PUBLIC HOLIDAY WORK**

- (a) All work performed on a Saturday shall be paid for at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) All work performed on a Sunday shall be paid for at the rate of double time.
- (c) All work performed on a public holiday prescribed in Clause 19 - Holidays with Pay of this award, payment shall be made at the rate of time and one half plus a day in lieu.

Provided that all piece-workers, whether employed on a weekly basis or otherwise, required to work on a Saturday or Sunday shall be paid for all piece-work performed at ordinary piece-work rates in addition to the ordinary time work rate for the classification under which he is employed for the time so worked.

The employee shall be paid for all piece-work performed on any of the holidays prescribed in Clause 19 - Holidays with Pay of this award, at ordinary piece-work rates in addition to time and one half work rate for the classification under which he is employed for the time so worked.

### **33. SICK LEAVE**

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
  - (ii) the employee shall, wherever possible, inform the employer of his inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
  - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour, that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

- (iv) he shall not be entitled in any year (whether in the employment of one employer or of more), to sick leave credit in excess of 2 weeks of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer;
  - (v) for the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

#### **34. SMOKO**

All employees shall be allowed a paid period smoko of 10 minutes each morning and afternoon.

#### **35. SPECIAL RATES**

Employees who are engaged in spraying, sowing, or spreading of fertiliser, handling of chemicals, or threshing or cleaning seeds indoors shall be provided by the employer with protective clothing (including where necessary, respirator and/or goggles) and be paid \$0.52 per hour extra while so engaged with a minimum payment as for 4 hours on any one day.

Any dispute under this clause shall be referred to the Secretary for Labour, whose decision shall be final.

#### **36. TOOLS AND EQUIPMENT**

The employer shall provide all tools and equipment required for the proper performance of the work, and the employee on leaving shall return all tools and equipment to the employer during working hours.

**This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.**

### **37. WET PAY**

If an employee is required to work in a wet place or in heavy rain he shall be provided with gumboots or oilskins and/or suitable head covering so as to protect him from getting wet.

If he is not so provided so as to protect him from getting wet he shall be paid therefore \$4.00 per day extra for each day or part of a day on which he is not provided with waterproof clothing.

P C Shelley  
**DEPUTY PRESIDENT**

3 August 2004