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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or variation of award

Tasmanian Trades and Labor Council
(T12940 of 2007)
Private Sector Awards
Public Sector Awards

FULL BENCH:
PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by $22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to $14.10 - State Minimum Wage rate determined at $527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

BUILDING TRADES AWARD

ORDER –

No 1 of 2007
(Consolidated)

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

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PART I - APPLICATION AND OPERATION

1. TITLE

This award shall be known as the "Building Trades Award".

2. INDEX

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3. SCOPE

This award is established in respect of the offsite building trades industry, which includes:

(a) painting, paper hanging, glazing;
(b) signwriting and sign making;
(c) plastering (whether solid or sheet) and plaster casting;

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(d) partitioning and ceiling fixing;
(e) floor sanding;
(f) carpentry;
(g) manufacturing joiners;
(h) bricklaying;
(i) stone working;
(j) any other work carried out by building trades employees not subject to another award.

PROVIDED that the place of work shall be other than on a construction site.

4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on of after 1 August 2007.

5. AWARD INTEREST

(a) The following employee organisations have an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*:

(i) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch.

(ii) The Australian Workers' Union, Tasmania Branch.

(b) The following employer organisations have an interest in this award pursuant to Section 63(10) of the *Industrial Relations Act 1984*:

(i) The Master Builders' Association of Tasmania.

(ii) the Tasmanian Sawmillers Industrial Association.

(c) The following employer organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:

the Tasmanian Chamber of Commerce and Industry Limited.

(d) The following employee organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labor Council.

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6. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Building Trades Award No. 2 of 2006 (Consolidated), No 3 of 2006, No 4 of 2006, No 5 of 2006 and No 6 of 2006.

PROVIDED that no right, obligation or liability incurred or accrued under the abovementioned award shall be affected by the supersession.

PART 11 - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

7. DEFINITIONS

'Carpenter or joiner' means an employee engaged in mixed industry upon maintenance, construction or shop work as those terms are defined in this clause.

'Construction work' means offsite work in connection with the erection, repair, maintenance, renovation, ornamentation or demolition of buildings or structures; the making, preparing, assembling or fixing of all wood work or fittings in connection therewith, and the making, preparing, assembling and fixing of any material necessitating the use of carpenters' tools or machines.

'Marker' or **'Setter out'** means an employee mainly employed marking and/or setting out work for other employees.

'Maintenance work' means small carpentry, repair and renovation work.

'Off site' means any place other than a construction site.

'Shop work' means any carpentry or joinery work performed by a carpenter or joiner in a workshop not located on a construction site.

'Special class tradesperson' means a tradesperson carpenter and/or joiner who is engaged on work, the performance of which requires the use of complex, high quality trade skills and experience which are not generally exercised in work covered by this award. For the purposes of this definition, 'complex, high quality trade skills and experience' shall be deemed to be acquired by the tradesperson:

(a) having had not less than 12 months on-the-job experience of such skilled work, and

(b) having, by satisfactory completion of a prescribed post trade course, or other approved course; or the achievement of knowledge and competency by other means, including the on-the-job experience in (a) above, as will enable the tradesperson to perform such work unsupervised, where necessary and practical, to the required standard of workmanship.

For the purpose of this definition, the 'Certificate of Technology (Building) Tasmania' is deemed to be a prescribed post trade course.

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8. EMPLOYMENT CATEGORIES

Employment shall be by the week.

9. TERMINATION OF EMPLOYMENT

(a) One week's notice of the termination of the employment engagement shall be given on either side or one week's pay shall be paid or forfeited in lieu thereof.

(b) A tradesperson shall be allowed the one hour prior to termination to gather, clean, sharpen, pack and transport his/her tools.

(c) Provided that nothing in this clause shall affect the right of the employer to dismiss an employee without notice for misconduct or refusing duty.

(d) This clause shall be read in conjunction with Clause 31 - Annual Leave, subclause (c) and paragraph (g)(ii) of Part IV, and Clause 17 - Payment of Wages subclause (e) of Part III, of this award.

PART III - WAGES AND RELATED MATTERS

10. WAGE RATES

The weekly wage rates set out hereunder shall be the rates payable to adult employees classified herein.

Classification	Base Rate	Supple-mentary Payment	Safety Net Adjustment	Weekly Wage Rate
	$	$	$	$
Labourer/Trades Assistant	314.30	52.10	201.70	568.10
Joiner and/or Machinist	365.20	52.10	203.70	621.00
Carpenter	365.20	52.10	203.70	621.00
Glazier	365.20	52.10	203.70	621.00
Painter	365.20	52.10	203.70	621.00
Shopfitter	365.20	52.10	203.70	621.00
Boilermaker and/or Structural Steel Tradesperson	365.20	52.10	203.70	621.00
Fibrous Plaster Caster	365.20	52.10	203.70	621.00
Signwriter	374.70	52.10	203.70	630.50
Marker or Setter Out	378.60	52.10	203.70	634.40
Special Class Tradesperson	385.00	52.10	203.70	640.80

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PROVIDED that an employee who is the holder of a Certificate in Building (or equivalent qualification) shall be paid an allowance of $5.55 per day in addition to all other wage rates prescribed for his/her classification.

11. LEADING HANDS AND FOREMEN

In addition to the rates prescribed in Clause 10 - Wage Rates of this Part, leading hands if appointed as such shall be paid:

		Per Hour
(a)	In charge of not more than 1 person	$0.39
(b)	In charge of 2 and not more than 5 persons	$0.90
(c)	In charge of 6 and not more than 10 persons	$1.15
(d)	In charge of over 10 persons	$1.53

(e) Foreman - in addition to rates prescribed in Clause 10 - Wage Rates of this Part, a Foreman shall be paid $20.20 per day.

12. PIECEWORK

Engagement on a piecework basis may be entered into provided:

(a) payment for such work shall be paid at a rate which will enable an employee to earn not less than $33^{1}/_{3}$ per cent above appropriate wage rates prescribed herein for ordinary hours of work and in addition thereto payment for all prescribed special rates, allowances and penalty rates; and

(b) an employee engaged on piecework shall be entitled to all of the conditions of employment prescribed in this award for employees on weekly hire.

13. APPRENTICES

The employment of apprentices shall be in accordance with the requirements of the *Vocational Education and Training Act 1994* and Regulations made thereto.

(a) The weekly wage rates to be paid by employers to apprentices shall be the undermentioned percentages of the relevant adult weekly wage rate prescribed in Clause 10 - Wage Rates of Part III of this award:

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Year of Apprenticeship	%

(i) Carpenter, Glazier, Boilermaker, Painter

1st year	38
2nd year	55
3rd year	75
4th year	90

In addition, the $11.30 Disability Allowance and appropriate Tool Allowance as prescribed in Clauses 19 and 20 of Part IV of this award.

(ii) Signwriter

1st year	38
2nd year	55
3rd year	75
4th year	90

In addition, the $11.30 Disability Allowance and appropriate Tool Allowance as prescribed in Clauses 19 and 20 of Part IV of this award.

The said minimum rates shall be calculated to the nearest 10 cents.

(b) An employee who is under 21 years of age on completion of an apprenticeship, or any junior, other than a probationary or an apprentice, who uses the tools in performing work usually carried out by tradespersons, shall be paid not less than the appropriate wage prescribed for tradespersons.

(c) (i) Tool allowances in accordance with the scale prescribed in Clause 21 - Tools and Tool Allowance of Part IV of this award, shall be paid to apprentices, in addition to rates prescribed in subclause (a) - Weekly Wage Rates, above.

(ii) An employer who provides an apprentice with a kit of tools may withhold from the wages of an apprentice the tool allowance until such time as the employer is reimbursed the cost of the tools. In the event of an apprentice being dismissed or leaving the employment before the cost of tools has been reimbursed, the employer shall be entitled to deduct from any monies owing to the apprentice the amount owing, or to retain such of the tools as will equal the value then owing. Tools provided shall be kept at the employer's establishment during the usual hours of work.

(d) Should an apprentice at the time of being apprenticed produce a School Certificate (Full Award) with passes in Mathematics, English and Science, he/she shall be entitled to $1.20 per week extra in addition to wages and allowances prescribed in this division.

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Except where inconsistent with the Tasmanian *Vocational Education and Training Act 1994* the general provisions of this award shall apply to apprentices.

(e) School-Based Apprentices

(i) Definition

This subclause shall apply to school-based apprentices. A school-based apprentice is an employee who is undertaking an apprenticeship in accordance with this subclause while also undertaking a course of secondary education.

A school-based apprenticeship may be undertaken in those trades declared by the State Training Authority under a Training Agreement or contract of Training.

(ii) Wage rates

The hourly rates that shall apply to school-based apprentices shall be the rates that apply to the corresponding full-time apprenticeship converted to an hourly basis. These hourly rates shall apply to school-based apprentices for total hours worked including time spent in off-the-job training.

Where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice is paid is deemed to be 25 per cent of the actual hours each week worked on-the-job. The wages paid for training time may be averaged over a semester or year.

(iii) Off-the-job training

The school-based apprentice shall be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

For the purposes of this subclause, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on-the-job.

(iv) Duration of apprenticeship

The duration of the apprenticeship shall be as specified in the training agreement or contract for each apprentice. The period so specified to which the apprentice wage rates apply shall not exceed six years.

(v) Progression through wage structure

School based apprentices shall progress through the wage scale at the rate of 12 months progression for each two years of employment as an apprentice.

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School-based apprenticeship rates are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years' duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.

(vi) Conversion from a school-based to full-time apprenticeship

Where an apprentice converts from school-based to full-time, all time spent as a full-time apprentice shall count for the purposes of progression through the wage scale. This progression shall apply in addition to the progression achieved as a school-based apprentice.

(vii) Award entitlements

Except as provided in this subclause or where otherwise stated, school-based apprentices shall be entitled pro rata to all of the conditions of employees covered by this award.

14. JUNIOR LABOUR

(a) The proportion of unapprenticed junior employees to journeymen employed by any employer shall not exceed one to six on work performed in shops or joinery mills. Provided, nevertheless, that an employer who employs two adult employees may employ one unapprenticed junior employee.

(b) The weekly wage rate to be paid to juniors not being apprentices or probationary apprentices shall be the undermentioned percentages of the sum of the amounts prescribed in Clause 10 - Wage Rates of Part III of this award, for the classification 'Labourer/Trades Assistant':

	%
Under 19 years of age	75
19 to 20 years of age	90
20 to 21 years of age	100

(c) The general provisions of this award shall apply to the employment of unapprenticed junior employees.

15. MIXED FUNCTIONS

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

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16. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this clause an employer may engage employees at a supported wage rate (as set out in subclause (c) of this clause) 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 clause 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 clause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this clause:

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

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

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

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

(c) Supported Wage Rates

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

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Assessed capacity (subclause (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 clause, 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.

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(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 clause 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 clause 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 clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

(ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with subclauses (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 subclause (c) hereof.

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17. PAYMENT OF WAGES

(a) Pay Day and Methods

(i) All wages, allowances and other monies due shall be paid weekly and no later than Thursday each week by cash, or where the employer and the majority of employees and the relevant union(s) at an establishment agree, by electronic funds transfer. Provided that where the method of payment is electronic funds transfer this shall be at no cost to the employee. (Up to a maximum of three transactions per week including the original).

(ii) Where electronic/direct banking is agreed the employees may elect to have their monies deposited into two accounts.

(iii) An existing employee who believes genuine hardship will be incurred may make application for exemption. Where this occurs, the employer and the appropriate union will confer with the intent to resolving the hardship or agreeing to other arrangements.

(iv) Where wages are paid by electronic funds transfer, deposit will occur where practicable, on the day preceding normal pay day.

(v) Waiting Time Penalties

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

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

(vii) The employer shall not keep more than two days' wages in hand.

(b) Pay Packet Details

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

(i) date of payment;

(ii) period covered by such payment;

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(iii) the amount of wages paid for work at ordinary rates;

(iv) the number of hours paid at overtime rates and the amount paid thereof;

(v) the amount of allowances or special rates paid and the nature thereof;

(vi) the gross amount of wages and allowances paid;

(vii) the amount of each deduction made and the nature thereof;

(viii) the net amount of wages and allowances paid;

(ix) any annual holiday payments.

(c) Payment on Termination

When notice is given in accordance with Clause 9 - Termination of Employment of Part II of this award, all monies due to the employee shall be paid at the time of termination. Where this is not practicable the provisions of subclause (d) or subclause (e) of this clause shall apply.

(d) Employee Termination

Where an employee gives notice in accordance with Clause 9 - Termination of Employment of Part II of this award, and monies due are not paid on termination, the employer shall have two working days to send monies due by registered post; provided that if the monies are not posted within that time then time spent waiting beyond the two working days shall be paid for at ordinary rates, such payment to be at the rate of eight hours per day up to a week's pay when the right to waiting time shall terminate.

(e) Employer Terminating - Daily Penalties

Where an employer gives notice in accordance with Clause 9 - Termination of Employment of Part II of this award, all monies due shall be paid at termination; where this is not practicable the employer shall forward the monies due by registered post within two working days of termination and shall pay waiting time up to the time of posting at the rate of eight hours ordinary time per day up to a maximum of one week's pay.

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18. SUPERANNUATION

(a) Definitions

For the purposes of this clause:

(i) **'Superannuation legislation'** means the Federal legislation, as varied from time to time, governing the Superannuation rights and obligations of the parties, which includes the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993.*

(ii) **'Fund'** means a complying fund, as defined in the Superannuation legislation.

(iii) **'Eligible employee'** shall mean an employee who is entitled to receive employer superannuation contributions in accordance with the Superannuation legislation.

(iv) **'The relevant fund'** means the fund selected in respect of an employee pursuant to subclause (d) hereof.

(v) **'Ordinary time earnings'** (which for the purposes of the *Superannuation Guarantee (Administration) Act 1992* will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowance, shift loading, special rates, qualification allowances (e.g. first aid, laser safety officer), multi-storey allowance, location allowance, leading hand allowances and supervisory allowances, together with that compensation for travel patterns and mobility requirements of employees paid for days on which ordinary time is worked, where applicable. The term includes any regular over-award pay as well as casual rates received for ordinary hours of work. All other allowances and payments are excluded. (Note: for the purposes of this subclause 'ordinary hours of work' includes ordinary hours of shiftwork where applicable).

(b) Contributions

(i) In accordance with the Superannuation legislation and subject to the Trust Deed of the relevant Fund, an employer shall contribute an amount on behalf of each eligible employee into a relevant superannuation fund, which reflects the employers' liability as prescribed in Part 3 of the *Superannuation Guarantee (Administration) Act 1992* (as set out in paragraph (ii) hereof).

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(ii) The level of contributions required under the *Superannuation Guarantee (Administration) Act 1992* are as follows:

Financial year (1 July - 30 June)	Percentage
2000 - 01	8
2001 - 02	8
2002 - 03 and subsequent years	9

(c) Employee Contributions

(i) Subject to the rules of the Fund, employees who wish to make contributions to the Fund additional to those being paid pursuant to subclause (b) hereof, shall be entitled to do so. 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 employee's wages, amounts specified by the employee.

(ii) Employee contributions to the Fund deducted by the employer at the employee's request shall be held in Trust on the employee's behalf and be subject to the following conditions:

(1) The amount of contributions shall be expressed in whole dollars.

(2) Employees shall have the right to adjust the level of contribution made on their own behalf from the first of the month following the giving of three months' written notice to the employer. Provided that by agreement with the employer, employees may vary their additional contribution in extenuating circumstances at other times.

(3) Contributions deducted under this clause shall be forwarded to the fund at the same time as contributions under subclause (b) hereof.

(d) Superannuation Fund

(i) The employer shall make superannuation contributions, or improvements pursuant to this clause, to any of the following Funds (that meet the definition set out in 19(a)(ii) hereof):

(1) TASPLAN, C + BUS; or

(2) any fund agreed between the employer and eligible employees, and the union or unions, where applicable; or

(3) any fund which has application to employees in the principal business of the employer, where eligible employees covered by this award are a minority of award-covered employees; or

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(4) any other approved occupational superannuation fund to which an employer or eligible employee who is a member of the religious fellowship known as The Exclusive Brethren elects to contribute.

(ii) Provided that an employer shall not be required to contribute to more than one fund in respect of eligible employees employed under this award.

(iii) Subject to the terms of this clause, where there is a dispute over the choice of fund in respect of one or more employees, the matter shall be referred to the Tasmanian Industrial Commission for determination.

(e) Fund Membership

The employer shall make an eligible employee aware of their entitlements under this clause and shall arrange for such eligible employee the opportunity to become a member of the relevant Fund. An eligible employee shall, within a period of 30 days from commencement of employment complete the necessary application forms to become a member of the relevant Fund, to the satisfaction of the Trustees of that Fund, in order to be entitled to the contributions prescribed in subclause (b) hereof.

(f) Exemption

This clause shall be deemed to be satisfied by an employer, who as at 1 December 1991 or at the date of becoming respondent to this award, is already satisfying and continues to satisfy the requirements of subclause (b) hereof by providing superannuation contributions which reflects the employers' liability as prescribed in Part 3 of the *Superannuation Guarantee (Administration) Act 1992*, or any higher amount as required by the Trust Deed of the relevant fund.

(g) Absence from Work

Subject to the trust deed to the fund of which an employee is a member, the following provisions shall apply:

(i) Paid Leave

Contributions shall continue whilst a member of a fund is absent on paid annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave, or other paid leave.

(ii) Unpaid Leave

Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

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(iii) Work Related Injury or Illness

In the event of an eligible employee's absence from work being due to work related injury or work related illness, contributions at the normal rate shall continue for the period of the absence provided that:

(1) the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this award;

(2) the person remains an employee of the employer.

19. 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 Clause 16 - Supported Wage System is $527.10 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 paragraph (b)(i).

(iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in paragraph (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under paragraph (c)(ii) is greater.

(ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in paragraph (b)(i).

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(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 2007 State Wage Case Decision (T12940 of 2007) and all previous safety net and state wage case adjustments.

PART IV – ALLOWANCES

20. DISABILITY ALLOWANCE

In addition to rates prescribed in Clause 10 - Wage Rates and Clause 11 - Leading Hands and Foremen of Part III, and Clause 21 - Tool Allowance of Part IV of this award, all employees (including apprentices and unapprenticed juniors) shall be paid an allowance of $11.30 per week (for all purposes of the award) to compensate for disabilities of the industry not otherwise provided for in this award.

21. TOOL ALLOWANCE

In addition to the rates prescribed in Clause 10 - Wage Rates and Clause 11 - Leading Hands and Foremen of Part III, and Clause 20 - Disability Allowance of Part IV of this award, an employee shall be paid the following tool allowance for all purposes of the award in recognition of the employee providing the tools specified in Clause 45 - Tools and Lockers of Part VIII:

	Per week $
Carpenter	24.20
Joiner and/or Shop Fitter	24.20
Signwriter	5.80
Painter	5.80
Glazier	5.80

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Subject to the provisions of this clause school-based apprentices shall receive the full tool allowance per week. Notwithstanding the other provisions of this clause, school-based apprentices shall receive a tool allowance of the amount prescribed in this clause within a period of three months from the date of commencement of employment (backdated to the date of commencement). Provided however that an employer may, by agreement with the school-based apprentice's parent or guardian, elect to provide the apprentice with a kit of tools and, subject to establishing the value of the tools at the time of so providing, deduct the tool allowance until the cost of the kit of tools is reimbursed. In the event of a school-based apprentice being dismissed or leaving employment before the cost of the tool kit has been reimbursed the employer shall be entitled to deduct from any wages due to the apprentice the remaining cost of the tool kit; or by agreement retain tools at the originally nominated value to the amount still owing.

22. SPECIAL RATES

In addition to the rates otherwise prescribed in this award, the following extra rates shall be paid to employees in this award:

(a) Insulation

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwood, slag wool or other recognised insulating material of a like nature, or working in the immediate vicinity so as to be affected by the use thereof, $0.65 per hour or part thereof.

(b) Hot Work

An employee who works in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius - $0.53 per hour or part thereof; exceeding 54 degrees Celsius - $0.65 per hour or part thereof.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this subclause.

(c) Cold Work

An employee who works in a place where the temperature is lowered by artificial means to less than 0 degrees Celsius shall be paid $0.53 per hour.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this subclause.

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(d) Confined Space

An employee required to work in a confined space shall be paid $0.65 per hour or part thereof.

'Confined Space' means a place the dimensions or nature of which necessitate working in a cramped position or without sufficient ventilation.

(e) Explosive Powered Tools

An employee who is required to use an explosive powered tool, shall be paid $1.30 for each day on which the employee uses such a tool.

(f) Wet Work

Employees working in any place where water is continually dripping on the employee so that clothing and boots become wet, or where there is water under foot, shall be paid $0.53 per hour whilst so engaged.

(g) Dirty Work

An employee engaged on unusually dirty work shall be paid $0.53 per hour whilst so engaged.

(h) Toxic Substances

(i) An employee required to use toxic substances shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.

(ii) Employees using such materials will be provided with and shall use all safeguards as are required by Clause 39 - Protection of Employees of Part VIII of this award, and the appropriate Government authority or in the absence of such requirement such safeguards as are defined by a competent authority or person chosen by the union and the employer.

(iii) Employees using toxic substances or materials of a like nature shall be paid $0.65 per hour extra. Employees working in close proximity to employees so engaged shall be paid $0.53 per hour extra.

(iv) For the purposes of this subclause toxic substances shall include epoxy based and all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system, shall be deemed to be materials of a like nature.

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(i) Fumes

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between the union and the employer; provided that, in default of agreement the matter may be referred to the Tasmanian Industrial Commission for the fixation of a special rate.

Any special rate so fixed shall apply from the date the employer is advised of the claim and thereafter shall be paid as and when the fume condition occurs.

(j) Asbestos

(i) Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.

(ii) **PROVIDED** that where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) such employees shall be paid $0.65 per hour extra whilst so engaged.

(k) Dry Polishing of Tiles

Employees engaged on dry polishing of tiles where machines are used shall be paid $0.65 per hour or part thereof.

(l) Cutting Tiles

An employee engaged at cutting tiles by electric saw shall be paid $0.65 per hour whilst so engaged.

(m) Second Hand Timber

Where, whilst working with second hand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, he/she shall be entitled to an allowance of $2.00 per day on each day upon which such tools are so damaged, provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job.

(n) Computing Quantities

Employees who are regularly required to compute or estimate quantities of materials in respect of the work performed by other employees shall be paid an additional $3.80 per day or part thereof.

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PROVIDED that this allowance shall not apply to an employee classified as a leading hand and receiving the allowance prescribed in Clause 11 - Leading Hands and Foremen of Part III of this award.

(o) Spray Application

An employee engaged on all spray applications carried out in other than a properly constructed booth approved by the appropriate government agency shall be paid $0.53 per hour extra.

(p) Conditions Respecting Special Rates

(i) The special rates prescribed in this award shall be paid irrespective of the times at which work is performed and shall not be subject to any premium or penalty conditions.

(ii) Where more than one of the above rates provides payments for disability of substantially the same nature then only the highest of such rates shall be payable.

(iii) This limitation does not apply to the 'all purpose' special rates and allowances.

23. MEAL ALLOWANCE

An employee required to work overtime for at least one and a half hours after working ordinary hours shall be paid by the employer an amount of $14.10 to meet the cost of a meal.

24. FIRST AID CERTIFICATE ALLOWANCE

An employee who is the holder of a current Red Cross or St. John First Aid Certificate, shall if required to act as a first aid attendant, be paid $2.15 per day extra.

PART V - HOURS OF WORK, SHIFT WORK AND OVERTIME

25. HOURS OF WORK

(a) The ordinary working hours shall be 38 per week to be implemented in one of the following ways:

(i) by employees working less than eight ordinary hours each day;

(ii) by employees working less than eight ordinary hours on one or more days each week;

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(iii) by fixing one week day on which all employees will be off during a particular work cycle;

(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.

(b) In each establishment 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.

(c) If the matter cannot be resolved at establishment level it shall be referred to:

(i) the State Secretary of the union or unions at which level a conference of the parties shall be convened without delay;

(ii) if the problem remains unresolved it shall be referred to the Tasmanian Industrial Commission whose decision shall be final and binding.

(d) Notice of Days Off

Except as provided in subclause (e) of this clause, in cases where by virtue of the arrangement of his/her ordinary working hours an employee, in accordance with paragraphs (a)(iii) and (a)(iv) of this clause, is entitled to a day off during his/her work cycle, such employee shall be advised by the employer at least four weeks in advance of the week day he/she is to take off.

(e) (i) An employer may by agreement with one or more of employees substitute the day an employee is scheduled to take as a rostered day off in accordance with paragraphs (a)(iii) and (a)(iv) of this clause for another day.

(ii) Where the 38 hour week is arranged in accordance with paragraphs (a)(iii) and (a)(iv) of this clause rostered days off may be scheduled up to 15 months in advance so as to minimise the impact and inconvenience in the work place, which scheduling may include if appropriate alignment with public holidays.

26. START AND FINISH TIMES

(a) Starting and finishing times including start and finish times for tea breaks and meal breaks once established shall be adhered to by employees.

(b) Employees shall start and finish work on the job at the appointed time dressed in their work attire including where appropriate safety equipment.

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27. REST PERIODS AND CRIB TIME

(a) There shall be allowed, without deduction of pay, a rest period of 10 minutes between 9.00am and 11.00am. There shall be a cessation of work and of working time for the purpose of a meal on each day, of not less than 30 minutes, to be taken between 12 noon and 1.00pm, and a further rest period of 10 minutes between 2.30pm and 3.30pm.

(b) When an employee is required to work overtime after the usual ceasing time for the day or shift for two hours or more, he/she shall be allowed to take, without deduction of pay, a crib time of 20 minutes in duration immediately after such ceasing time and thereafter, after each four hours of continuous work, he/she shall be allowed to take also, without deduction of pay, a crib time of 30 minutes in duration. In the event of an employee remaining at work after the usual ceasing time without taking the crib time of 20 minutes and continues at work for a period of two hours or more, he/she shall be regarded as having worked 20 minutes more than the time worked and paid accordingly.

For the purposes of this subclause 'usual ceasing time' is at the end of ordinary hours inclusive of time worked for accrual purposes as prescribed in Clause 25 - Hours of Work or Clause 30 - Shift Work subclause (d) of Part V of this award.

(c) Where shift work comprises three continuous and consecutive shifts of eight hours each per day inclusive of time worked for accrual purposes as prescribed in Clause 30 - Shift Work subclause (d) of Part V, a crib time of 20 minutes in duration shall be allowed without deduction of pay in each shift, such crib time being in lieu of any other rest period or cessation of work elsewhere prescribed in this award.

(d) The provisions of subclauses (b) and (c) of this clause shall not be applicable in the case of an employee who is allowed the rest periods prescribed by Clause 22 - Special Rates subclause (b) - Hot Work and subclause (c) - Cold Work of Part IV of this award.

28. OVERTIME AND SPECIAL TIME

(a) All time worked beyond the ordinary time of work inclusive of time worked for accrual purposes as prescribed in Clause 25 - Hours of Work and Clause 30 - Shift Work subclause (d) of Part V of this award shall be paid for at the rate of one and a half times ordinary rates for the first two hours thereof and at double time thereafter.

(b) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours work at the appropriate rates for each time he/she is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full three hours if the job he/she was recalled to perform is completed within a shorter period.

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This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside his/her ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

(c) If an employer requires an employee to work during the time prescribed by Clause 27 – Rest Periods and Crib Time of Part V of this award, for cessation of work for the purpose of a meal, the employee shall be allowed whatever time is necessary to make up the prescribed time of cessation, and shall be paid at the rate of double time for the period worked between the prescribed time of cessation and the beginning of the time allowed in substitution for the prescribed cessation time; provided however, that the employer shall not be bound to pay in addition for the time allowed in substitution for the said cessation time; and provided also that if the cessation time is shortened at the request of the employee to the minimum of 30 minutes prescribed in Clause 27 – Rest Periods and Crib Time of Part V of this award, or to any other extent (not being less than 30 minutes) the employer shall not be required to pay more than the ordinary rates of pay for the time worked as a result of such shortening, but such time shall form part of the ordinary working time of the day.

(d) No apprentice under the age of 18 years shall be required to work overtime or shift work unless he/she so desires. No apprentice shall, except in an emergency, work or be required to work overtime or shift work at times which would prevent his/her attendance at Technical School, as required by any applicable statute, award or regulation.

(e) When an employee, after having worked overtime and/or a shift for which he/she has not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer shall provide the employee with conveyance to his/her home or to the nearest public transport.

(f) An employee who works so much overtime:

(i) between the termination of his/her ordinary work day or shift, and the commencement of his/her ordinary work in the next day or shift, that he/she has not had at least 10 consecutive hours off duty between these times;

(ii) or on Saturdays, Sundays and holidays, not being ordinary working days, or on a rostered day off, without having had 10 consecutive hours off duty in the 24 hours preceding his/her ordinary commencing time on his/her next ordinary day or shift; shall, subject to this subclause be released after completion of such overtime until he/she has had 10 hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) An employee who has worked continuously (except for meal or crib times allowed by this award) for 20 hours shall not be required to continue at or recommence work for at least 12 hours.

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(g) If, on the instructions of the employer, such an employee resumes or continues to work without having had such 10 consecutive hours off duty, he/she shall be paid at double rates until released from duty for such period, and shall then be entitled to be absent until he/she has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provision of this subclause shall apply in the case of shift workers as if eight hours were substituted for 10 hours when overtime is worked:

(i) for the purpose of changing shift rosters; or

(ii) where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or

(iii) where a shift is worked by arrangement between the employees themselves.

(h) Subject to subclause (d) hereof, an employer may require any employee to work reasonable overtime.

29. WEEKEND WORK

(a) Overtime work on Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided that all overtime worked after 12 noon on Saturday shall be paid for at the rate of double time.

(b) All time worked on Sundays shall be paid for at the rate of double time.

(c) An employee required to work overtime on a Saturday or to work on a Sunday shall be afforded at least three hours work on a Saturday or four hours on a Sunday or shall be paid for three hours on a Saturday or four hours on a Sunday at the appropriate rates.

(d) An employee working overtime on Saturday, or working on a Sunday, shall be allowed, without deduction of pay, a rest period of 10 minutes between 9.00am and 11.00am.

(e) An employee working overtime on a Saturday, or working on a Sunday, shall be allowed a paid crib time of 20 minutes after four hours work, to be paid for at the ordinary rate of pay but this provision shall not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay.

(f) In the event of an employee being required to work in excess of a further four hours, he shall be allowed to take a paid crib time of 30 minutes which shall be paid at the ordinary rate of pay.

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30. SHIFT WORK

Where it is necessary that work is performed in shifts the following conditions shall apply:

(a) For the purposes of this clause:

'Afternoon shift' means a shift finishing at or after 9.00pm and at or before 11.00pm.

'Night shift' means a shift finishing after 11.00pm and at or before 7.00am.

'Early morning shift' means a shift finishing after 12.30pm and before 2.00pm.

'Early afternoon shift' means a shift finishing after 7.30pm and before 9.00pm.

(b) Other than work on a Saturday, Sunday or holiday, the rate of pay for afternoon or night shift shall be time and a half and the rate for early morning and early afternoon shift shall be time and a quarter, provided that the employee is employed continuously for five shifts Monday to Friday in any week. The observance of a holiday in any week shall not be regarded as a break in continuity for the purpose of this subclause.

(c) An employee who is employed for less than five consecutive shifts Monday to Friday shall be paid for each day he/she works on any of the shifts referred to in subclause (b) of this clause at the rate of time and a half for the first two hours and double time thereafter provided that when a job finishes after proceeding on shift work for more than one week, or the employee terminates his services during the week, he/she shall be paid at the rate specified in subclause (b) of this clause for the time actually worked.

(d) (i) The ordinary hours inclusive of time worked for accrual purposes as prescribed in Clause 25 - Hours of Work of Part V of this award or subclause (d) of this clause of both afternoon and night shift shall be eight hours daily inclusive of meal breaks.

PROVIDED that where shift work comprises three continuous and consecutive shifts of eight hours each per day, a crib time of 20 minutes in duration shall be allowed without deduction of pay in each shift, such crib time being in lieu of any other rest period or cessation of work elsewhere prescribed by this award.

(ii) Employees working on any of the shifts referred to in subclause (b) of this clause shall accrue 25.26 minutes for each eight hour shift for every 20 shift cycle. This 20th shift shall be paid for at the appropriate shift rates as prescribed by this clause.

(iii) Paid leave taken during any cycle of four weeks and public holidays as prescribed by Clause 36 - Public Holidays and Holiday Work of Part VI of this award, shall be regarded as shift work for accrual purposes.

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(iv) Except as provided above, employees not working a complete four week cycle shall be paid accrued pro rata entitlements for each shift worked on the programmed shift off or, in the case of termination of employment on termination.

(v) The employer and employee shall agree in writing upon arrangements for rostered paid days off during the 20 day cycle or for the accumulation of accrued days to be taken at or before the end of the contract, provided that such accumulation shall not exceed more than five such accrued days before they are taken as paid days off, and when taken the days shall be regarded as days worked for accrual purposes in the particular 20 shift cycle.

(vi) Once such days have been rostered they shall be taken as paid days off; provided that where an employer, for emergency reasons requires an employee to work on his/her rostered day off, the employee shall be paid, in addition to his/her accrued entitlement, the penalty rates prescribed in subclause (h) of this clause.

(vii) For the purpose of this clause an employee shall not be required to work for more than five hours without a meal break.

(e) An employee shall be given at least 48 hours notice of a requirement to work shift work.

(f) The hours for shift workers when fixed, shall not be altered except for breakdowns or other causes beyond the control of the employer, provided that notice of such alteration shall be given to the employee not later than the ceasing time of the previous shift.

(g) For all work performed on a Saturday, Sunday or holiday, the provisions of Clause 28 - Overtime and Special Time and Clause 29 - Weekend Work of Part V, and Clause 36 - Public Holidays and Holiday Work of Part VI of this award, shall be applicable in lieu of the rates prescribed in this clause.

(h) Work in excess of shift hours, Monday to Friday, other than holidays, shall be paid for at double time, provided that these rates shall be based in each case on ordinary rates.

(i) Shift work hours shall be worked between Monday to Friday inclusive provided that an ordinary night shift commencing before, and extending beyond midnight Friday, shall be regarded as a Friday shift.

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PART VI - LEAVE AND HOLIDAYS WITH PAY

31. ANNUAL LEAVE

(a) Period of Leave

Subject to the provisions of subclauses (c) and (e) of this clause, a period of 28 consecutive days, exclusive of any public holidays occurring during the period, shall be given and taken as leave annually to all employees, other than casual employees, after 12 months' continuous service (less the period of annual leave) with an employer.

(b) Method of Taking Leave

(i) Either 28 consecutive days, or two separate periods of not less than seven consecutive days in all cases exclusive of any public holidays occurring therein, shall be given and taken within six months from the date when the right to annual leave accrued.

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

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

(iv) Where annual leave is proposed to be given and taken in two periods, one of which is to be in conjunction with the Christmas and New Year holidays, representatives of the employers and employees, parties to this award, shall meet not later than the 31st day in July in each year in order to fix the commencing and finishing dates for the following Christmas - New Year period of leave. Where no agreement can be reached between the representatives the matter shall be referred to the Tasmanian Industrial Commission for determination.

(c) Leave Allowed Before Due Date

(i) An employer may allow an employee to take his annual leave prior to the employee's right thereto. In such circumstances the qualifying period of further annual leave shall not commence until the expiration of the 12 months in respect of which the leave so allowed was taken.

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(ii) Where an employer has allowed an employee to take annual leave pursuant to subclause (a) of this clause and the employee's services are terminated (by whatsoever cause) prior to the employee completing the 12 months' continuous service for which leave was allowed in advance, the employer may for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable on termination of the employment one-fifty second of the amount of wages paid on account of the annual leave.

(iii) Notwithstanding anything contained in this subclause an employee who has worked for 12 months in the industry with a number of different employers without taking annual leave shall be entitled to take annual leave and be paid one-twelfth of an ordinary weeks wages in respect of each completed 40 hours of continuous service with his current employer.

(d) Proportionate Leave on Termination

Where an employee has given five working days or more continuous service, inclusive of any day off as prescribed by Clause 25 - Hours of Work or Clause 30 - Shift Work subclause (d) of Part V of this award (excluding overtime), and the employee either leaves the employment or the employment is terminated by the employer, such employee shall be paid one-twelfth of an ordinary week's wages in respect of each completed five working days of continuous service with his/her current employer for which leave has not been granted or paid for in accordance with this award.

(e) Broken Service

Where an employee breaks his/her continuity of service by an absence from work for any reason other than a reason set out in subclause (f) of this clause, the amount of leave to which the employee would have been entitled under subclause (f) of this clause shall be reduced by one forty-eighth for each week or part thereof during which any such absence occurs and the amount of payment in lieu of leave to which the employee would have been entitled under subclause (d) of this clause shall be reduced by one-twelfth of a week's pay for each week or part thereof during which any such absence occurs.

PROVIDED that no reduction shall be made in respect of any absence unless the employer informs the employee in writing of an intention so to do within 14 days of the termination of the absence.

(f) Calculation of Continuous Service

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

(i) illness or accident up to a maximum of four weeks after the expiration of paid sick leave;

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(ii) bereavement leave;

(iii) jury service;

(iv) injury received during the course of employment and up to a maximum of 26 weeks for which he/she received workers' compensation;

(v) where called up for military service for up to three months in any qualifying period;

(vi) long service leave;

(vii) any reason satisfactory to the employer or in the event of dispute to the Tasmanian Industrial Commission. Provided that the reason shall not be deemed satisfactory unless the employee has informed the employer within 24 hours of the time when he/she was due to attend for work or as soon as practicable thereafter of the reason for the absence and probable duration thereof.

(g) Leave Payment

(i) Payment for Period of Leave

Each employee, before going on leave, shall be paid in advance the wages which would ordinarily accrue to the employee during the currency of the leave.

(ii) Annual Leave Loading

In addition to the payment prescribed in paragraph (i) of this subclause an employee shall receive during a period of annual leave a loading of 17.5 per cent calculated on the rates and allowances prescribed by Clause 10 - Wage Rates and Clause 11 - Leading Hands and Foremen (if applicable) of Part III, and Clause 20 - Disability Allowance and Clause 21 - Tool Allowance of Part IV of this award. The loading prescribed above shall also apply to proportionate leave on lawful termination.

(h) Service Under Previous Award

For the purposes of calculating annual leave the service of the employee prior to the operative date of this award shall be taken into account but an employee shall not be entitled to leave (or payment in lieu thereof) for any period in respect of which leave (or payment in lieu thereof) has been allowed or made under any previous award.

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(i) Annual Close Down

Notwithstanding anything contained in this award an employer giving any leave in conjunction with the Christmas/New Year holidays may, at the employer's option, either:

(i) stand off without pay during the period of leave any employee who has not yet qualified under subclause (a) of this clause; or

(ii) stand off for the period of leave any employee who has not qualified under subclause (d) of this clause and pay the employee (up to the period of leave then given) at a rate of one-twelfth of an ordinary week's wages in respect of each 40 hours continuous service (excluding overtime);

(iii) **PROVIDED** that where an employer decides to close down an establishment at the Christmas/New Year period for the purpose of giving the whole of the annual leave due to all or the majority of employees then qualified for such leave, such employer shall give the employees at least two months' notice of the intention to close down.

32. LONG SERVICE LEAVE

TASBUILD

Eligible employers will be registered with TasBuild and will comply with its obligations under the *Construction Industry (Long Service) Act 1997.*

For the purpose of this clause eligible employees will be in accordance with the *Construction Industry (Long Service) Act 1997* (as amended from time to time) or as determined by the TasBuild Board in accordance with its rules (as amended from time to time).

33. PERSONAL LEAVE

The provisions of this clause apply to employees other than casuals. The entitlements to casual employees are set out in subclause (f) – Casual Employees – Caring Responsibilities.

(a) Amount of Paid Personal Leave

(i) Paid personal leave will be available to an employee when he/she is absent due to:

(1) personal illness or injury (sick leave); 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 (carer's leave); or

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(3) bereavement on the death of an immediate family or household member (bereavement leave).

(ii) An employee is entitled to thirteen days of personal leave in each year of service.

(iii) In any year unused personal leave accrues at the rate of the lesser of:

(1) ten days less the total amount of sick leave and carer's leave taken from the current year's personal leave entitlement in that year; or

(2) the balance of that year's unused personal leave.

(b) Immediate Family or Household

(i) The entitlement to use personal leave for the purpose of carer's or bereavement leave is subject to the person being either:

(1) a member of the employee's immediate family; or

(2) a member of the employee's household.

(ii) The term **'immediate family'** includes:

(1) 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 the employees husband or wife on a bona fide domestic basis; and

(2) 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.

(c) Sick Leave

(i) An employee during the first year of employment with an employer shall be entitled to use personal leave as sick leave, on account of personal illness or injury other than that covered by workers' compensation, at the rate of one day at the beginning of each of the first 10 calendar months.

(ii) Provided that an employee who has completed one year of continuous employment shall be credited with a further 10 days' sick leave entitlement at the beginning of the employee's second and subsequent year, which shall commence on the anniversary of engagement.

(iii) An employee is entitled to use accumulated personal leave for the purpose of sick leave where the current year's sick leave entitlement has been exhausted.

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(iv) An employee shall within four hours of the commencement of the employee's normal working day inform the employer of the employee's inability to attend for duty, and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.

(v) An employee shall prove to the employer's satisfaction (or in the event of a dispute, the Tasmanian Industrial Commission) that the employee was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

(d) Bereavement Leave

(i) An employee is entitled to use up to three days' paid personal leave as bereavement leave on the death within Australia of a member of the employee's immediate family or household. Such leave shall be up to and including the day of the funeral of such relation (or where made necessary because of travel arrangements, the day after the funeral).

(ii) Provided that, with the consent of the employer, which shall not be unreasonably withheld, an employee shall in addition be entitled to up to 10 working days unpaid bereavement leave in respect of the death within Australia or overseas of a relation to whom the clause applies.

(iii) Proof of such death shall be provided by the employee to the satisfaction of the employer.

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

(e) Carer's Leave

(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 (e)(i), beyond the limit set out in paragraph (e)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

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(iii) 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.

(iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reason for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(v) 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 subclause (e) is met.

(vi) In normal circumstances an employee shall not take carer's leave under this clause where another person has taken leave to care for the same person.

(f) Casual Employees - Caring responsibilities

(i) Subject to the evidentiary and notice requirements in subclause (e), casual employees are entitled to not be available to attend work, or to leave work:

(1) 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; or

(2) 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. The casual employee is 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.

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34. 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 month 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.

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(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.

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(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

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(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.

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(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.

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(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.

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(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.

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(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 other wise 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.

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(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.

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(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).

35. JURY SERVICE

An employee required to attend for jury service shall be entitled to have his/her pay made up by the employer to equal his/her ordinary pay as for eight hours (inclusive of accrued entitlements) prescribed by Clause 25 - Hours of Work or Clause 30 - Shift Work subclause (d) of Part V of this award, per day whilst meeting this requirement. The employee shall give the employer proof of such attendance and the amount received in respect of such jury service.

36. PUBLIC HOLIDAYS AND HOLIDAY WORK

(a) An employee shall be entitled to the following holidays without deduction of pay:

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Eight-Hour Day or Labour Day, Christmas Day, Boxing Day, Show Day, Regatta Day in the south of the State (i.e. Oatlands and all towns south of Oatlands) and Recreation Day in the north of the State (i.e. all towns north of Oatlands).

PROVIDED that if any other day be, by a State Act of Parliament or State Proclamation, substituted for any of the said holidays, the day so substituted shall be observed.

(b) Where, in any locality, a show day falls on a Saturday or Sunday, an employer whose premises are in that locality, shall grant employees another day as a paid holiday in lieu thereof.

Such entitlement shall be taken on a day determined by the employer after conferring with the employees concerned; provided that any disagreement shall be resolved in accordance with Clause 38 - Settlement of Disputes of Part VII of this award.

(c) For the purposes of this award 'Show Day' shall mean the local Show Day in cities, towns or districts of the State, when that day, in the locality of the employer's premises, occurs on an employee's ordinary work day.

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(d) By agreement between any employer and the unions, other days may be substituted for the said days or any of them as to such employers undertaking.

(e) Where an additional or substitute public holiday is proclaimed by Order in Council or otherwise gazetted by authority of the Australian or State Government under any Act such day shall, within the defined locality, be deemed to be a holiday for the purposes of this award: provided that an employee shall not be entitled to the benefit of more than one holiday upon such occasion.

(f) All work performed on any of the holidays prescribed in this clause or substituted in lieu thereof, shall be paid for at the rate of double time and a half.

(g) The provisions of Clause 28 - Overtime and Special Time subclauses (e) and (f) of Part V of this award, shall apply in respect of work on a holiday.

(h) An employee required to work on a holiday shall be afforded at least four hours work or paid for four hours at the appropriate rate.

(i) **PROVIDED** that:

(i) an employer who terminates the employment of an employee except for reasons of misconduct or incompetency (proof of which shall lie upon the employer) shall pay the employee a day's ordinary wages for each holiday prescribed in subclause (a) of this clause or each holiday in a group as prescribed in paragraph (ii) of this subclause which falls within 10 consecutive days after the day of termination;

(ii) where any two or more of the holidays prescribed in this award occur within a seven day span, such holidays shall for the purpose of this award be a group of holidays. If the first day of the group of holidays falls within 10 consecutive days after termination, the whole group shall be deemed to fall within the 10 consecutive days. Christmas Day, Boxing Day and New Year's Day shall be regarded as a group;

(iii) no employee shall be entitled to receive payment from more than one employer in respect of the same public holiday or group of holidays;

(iv) the employee has worked as required by the employer the working day immediately before and the working day immediately after such a holiday or is absent with the permission of the employer or is absent with reasonable cause. Absence arising by termination of employment by the employee shall not be reasonable cause.

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37. EASTER SATURDAY

(a) All work performed on the day after Good Friday shall be paid for at the rate of double time and a half.

(b) An employee required to work on the Saturday following Good Friday shall be afforded at least four hours work or paid for four hours at the appropriate rate.

PART VII - CONSULTATION AND DISPUTE RESOLUTION

38. SETTLEMENT OF DISPUTES

(a) Where an employee has submitted a request concerning any matter directly connected with his/her employment to a foreman or a more senior representative of management and that request has been refused, the employee may if he/she so desires, ask the union delegate to submit the matter to management, and the matter shall then be submitted by the union delegate to the appropriate executive of the employer concerned.

(b) If not settled at this stage, the matter shall be formally submitted by the secretary of the union to the employer.

(c) If not settled at this stage, the matter shall then be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of an association of employers as the employer may desire.

(d) If the matter is still not settled, it shall be submitted to the Tasmanian Industrial Commission.

(e) Where the above procedures are being followed, work shall continue normally. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

(f) Notwithstanding anything contained in the previous five subclauses any party shall be free to exercise their rights if the dispute is not finalised within seven days of notification.

(g) This clause shall not apply to any dispute as to a bona fide safety issue.

(h) Any dispute concerning a job steward shall be subject to the provisions of Clause 46 - Job Stewards subclause (b) of Part IX of this award.

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PART VIII - OCCUPATIONAL HEALTH AND SAFETY, TOOLS AND AMENITIES

39. PROTECTION OF EMPLOYEES

(a) The employer shall comply with the provisions of the laws of the State concerning the installation and maintenance of guards for machinery.

(b) Suitable asbestos free sheets and/or coloured glasses shall be provided by the employer for the protection of employees working at oxy-acetylene or electric arc welding.

(c) Where electric arc operators are working, suitable screens shall be provided in order to protect employees from flash.

(d) The employer shall provide gas masks for employees engaged upon work where gas is present.

(e) Painter's Washing Time

The employer shall provide sufficient facilities for washing and 10 minutes shall be allowed before finishing time to enable employees to wash and put away gear.

(f) Hand protective paste - every employer of painters, signwriters, or glazier employees shall at the request of any such employee provide hand protective paste for the use of such employee.

(g) Spray Painting, Sand Blasting and Steam Cleaning

Employers engaged in spray-painting, sandblasting and steam-cleaning of surfaces shall provide for the use of every employee a suitable respirator or independent air-fed helmet of a type to be approved by the appropriate government agency. Such equipment shall be cleansed daily and shall be maintained in clean and efficient condition, and when not in use shall be kept under cover in a suitable place.

Employers shall also provide a supply of clean water, soap, clean towels and suitable overalls and/or wet weather gear for steam-cleaning and head coverings for the use of employees. Every employee engaged on the abovementioned processes shall wear suitable overalls and head coverings during the whole working period, and shall use the protective equipment provided by the employer.

Every employee engaged on spray-painting and/or sandblasting processes shall be supplied with one litre of milk per day and all combination overalls shall be supplied by the employer and cleansed at the employer's expense.

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(h) The employer shall observe the following procedures when employees are required to use toxic substances covered by Clause 22 - Special Rates subclause (g) of Part IV of this award. Where there is an absence of adequate natural ventilation the employer shall provide ventilation by artificial means and supply an approved type of respirator and/or an approved type of hood with airline attached and in addition the employer shall supply protective clothing as approved by the Health Department; proper washing facilities together with towels, soap and a plentiful supply of hot water shall be available when required.

Where an employee is using materials of the types mentioned in this subclause and such work continues to his/her meal break, such employee shall be entitled to take washing time of 10 minutes immediately prior to his/her meal break. Where this work continues to the ceasing time of the day or is finalised at any time prior to the ceasing time of the day, washing time of 10 minutes shall be granted. The washing time break or breaks shall be counted as time worked.

40. FIRST AID EQUIPMENT

The employer shall provide and maintain first aid equipment in conformity with the standards prescribed in the *Workplace Health and Safety Act 1995*.

41. INJURED WORKERS

When an employee is injured during his/her employment and requires medical attention, the employer shall make transport available or obtain the services of an ambulance to have the employee taken to a hospital or doctor.

42. AMENITIES

The employer shall provide reasonably accessible boiling water at meal times and rest periods and cool, clean drinking water shall be provided at all times in a reasonably accessible place.

43. COMPENSATION FOR CLOTHES AND TOOLS

(a) An employee whose clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur or other deleterious substances, shall be paid such amount to cover the loss thereby suffered as may be agreed upon between the employee and the employer or, in default of agreement, as may be fixed by the Tasmanian Industrial Commission.

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(b) An employee shall be reimbursed by his/her employer to a maximum of $1402.00 for loss of tools or clothes by fire or breaking and entering whilst securely stored at the employer's direction in a room or building on the employer's premises, job or workshop or in a lock-up as provided in this award or if the tools are lost or stolen while being transported by the employee at the employer's direction, or if tools are lost or stolen during an employee's absence after leaving the job because of injury or illness.

PROVIDED that an employee transporting his/her own tools shall take all reasonable care to protect those tools and prevent theft or loss.

PROVIDED FURTHER that for the purpose of this clause:

(i) only tools used by the employee in the course of his/her employment shall be covered by this clause;

(ii) the employee shall, if requested to do so, furnish the employer with a list of tools so used;

(iii) reimbursement shall be at the current replacement value of new tools of the same or comparable quality;

(iv) the employee shall report any theft to the Police prior to making a claim on the employer for replacement of stolen tools.

(c) Where an employee is absent from work because of illness or accident and has advised the employer in accordance with Clause 33 - Personal Leave subclause (c) of Part VI of this award, the employer shall ensure that the employee's tools are securely stored during the absence.

(d) When an employer requires an employee to wear spectacles with toughened glass lenses the employer will pay the cost of the toughening process.

44. SPECIAL TOOLS AND PROTECTIVE CLOTHING

The employer shall provide the following tools and protective clothing when they are required for the work to be performed by the employees:

(a) Carpenters and Joiners

Dogs and cramps of all descriptions
Bars of all descriptions
Augers of all sizes
Star bits and bits not ordinarily used in a brace
Hammers (except claw hammers)
Glue pots and glue brushes
Dowel plates
Trammels

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Hand and thumb screws
Spanners
Soldering irons

(b) All Employees

(i) All power tools and steel tapes over 6 metres.

(ii) If in the course of the employment an employee is required to use muriatic acid such employee shall be provided with protective clothing.

(iii) The employer shall make available for the use of carpenters and joiners during working hours, a suitable grindstone or wheel together with power (hand or mechanically driven) for turning it. If a grindstone or wheel is not made available the employer shall pay to each carpenter or joiner $4.20 per week in lieu of same.

45. TOOLS AND LOCKERS

(a) Each carpenter shall provide himself/herself with and maintain a lockup tool box, a hammer, nail pocket, pencil, comb square, hand drill and bits up to 6 mm (1/4"), brace and bits 6 mm (1/4") up to 25 mm (1"), brace lock bits, set of chisels 6 mm (1/4"), 9 mm (3/8"), 12 mm (1/2"), 18 mm (3/4"), 25 mm (1"), 37 mm (1 ½"), plugging chisel, panel saw, hand saw, coping saw, keyhole saw - with extra nail cutting blade, chalk-line and chalk 30 m (100') line, level (about 750mm (30")), jack and smooth planes, German jack, hatchet, rasp, 3 screwdrivers 250 mm (10"), 200 mm (8"), and 150 mm (6"), plumb bob, dividers, oilstone, punches, pinch bar, sand-paper cork, bevel, tin snips, pincers, single tooth marking gauge, hacksaw frame, cold chisels - one small, pad saw handle, files, one rule 900 m a (3'), line level, roofing square.

(b) Each joiner shall provide himself/herself with and maintain a lockup tool box, a hammer, rule, pencil, 300 mm (12") and 150 mm (6") squares, mitre set, hand drill and bits up to 6 mm (1/4"), brace and bits from 6 mm (1/4") to 25 mm (1"), set of chisels 6 mm (1/4") to 37 mm (1 ½") with extra 6 mm (1/4") and 9 mm (3/8") mortise chisels, dovetail saw, tenon saw, panel saw and hand saw, coping or bowsaw, jack and smooth plane, rebate plane, rasps and files, papering cork, scraper, mallet, small level 600 mm (24"), 9 mm (3/8") gauge, dividers, routers, oilstones, punches gauges - single tooth- mortise, bevel screwdrivers 150 mm (6"), 200 mm (8"), 250 mm (10") spokeshave, pincers, scriber, bradawl.

(c) Each signwriter shall provide himself/herself with and maintain a lockup tool box, mahl-stick, rule, compass, dividers, straight edge, chalk-line, rule or steel tape not exceeding 3.6 m (12'), sable and other writers' pencils, pencils, tracing wheel, chamois leather, silk screen stencil knife, gilding cushion, mot, knife tip and any 'T' square up to 750 mm (30"), dagger and sword liner, all brushes up to 37 mm (1 ½") width.

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(d) Each painter and decorator shall provide himself/herself with and maintain a lockup tool box, a lay-brush, scissors, rule, plumb bob, chalk-line, pencils, rule and/or steel tape not exceeding 3.6 m (12'), trimming knife (if he/she requires such an instrument) and also with surface and joint rollers in addition to those tools supplied as a painter.

(e) Each painter shall provide himself/herself with and maintain a lockup tool box, and ordinary dusting brush and all necessary stripping and stopping knives, hammer, hacking knife, screwdriver and glazing knife, rule or steel tape not exceeding 3.6 m (12'). The employer shall provide all other brushes that may be necessary.

(f) Each glazier shall provide himself/herself with and maintain a lockup tool box, 2 putty knives (one facing, one stripping), 12 mm (1/2") wood chisel, light claw hammer, pair of pincers, duster, nail punch, hacking knife, heavy claw hammer, 900 mm (3') folding rule, pair of 250 mm (10") snips, medium screwdriver, heavy punch, centre punch, prick punch, broad knife, marking line 18 m (60') and 3.6 m (12'), steel tape. The employer shall supply gas cutters to leadlight glaziers.

(g) The employer shall provide on each job, a secure weatherproof locker solely for the purpose of storing employees' tools.

PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS

46. JOB STEWARDS

(a) An employee appointed as a job steward shall upon notification by the union to the employer be recognised as the accredited representative of the union to which he/she belongs and shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he/she represents and further shall be allowed reasonable time during working hours to attend to job matters affecting his/her union. A job steward shall notify the employer and the appropriate union prior to the calling of any stop work meeting.

(b) Prior to dismissal or transfer two days' notice shall be given to any job steward and his/her appropriate union. Payment in lieu of notice shall not be given. In the event of the union disputing the decision of management to transfer or terminate the service of the job steward, he/she shall remain on the job during which time the matter shall be referred to the Tasmanian Industrial Commission for determination.

The appropriate union shall, within three working days of notifying the management that it disputes the decision to transfer or terminate the job steward, request the Tasmanian Industrial Commission in writing to appoint a person to deal with the matter.

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47. POSTING OF NOTICES

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

48. RIGHT OF ENTRY

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

Tim Abey
COMMISSIONER

25 July 2007