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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
[T10230 of 2002]
Private Sector Awards

[T10288 of 2002]
Private Sector Awards

[T10289 of 2002]
Private and Public Sector Awards

FULL BENCH:
PRESIDENT P L LEARY
DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY

Wage Rates - State Wage Case July 2002 - applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002002 - Safety Net Review 2002 - Award rates increased by - $18 per week – Wage related allowances increased by 3.55% – Meal allowances increased to $11.90 - Supported Wage increased to $56 per week – Operation ffpp 1 August 2002 – State Minimum Wage determined at $431.40– s.35[1][b]

ORDER BY CONSENT

FARMING AND FRUIT GROWING AWARD

No. 1 of 2002
[Consolidated]

CLAUSES 3, 4, 5, 8 and 9 ARE VARIED, AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Farming and Fruit Growing Award".

2. SCOPE

This award is established in respect of the industry of farming and/or fruit growing and without limiting the generality of the foregoing, shall include:

(a) the preparation, sowing, raising, harvesting, preparation for packing, and packing of crops including grains, vegetables, peat moss, fungi, hops, nuts, or other specialised crops grown for the production of essential oils or pharmaceuticals;

(b) livestock farming including the management, breeding, rearing and/or grazing of horses, cattle, sheep, pigs, goats, poultry, deer and/or other livestock and dairy farming;

(c) fruit growing including the management, cultivation, picking, grading, processing for packing, packing and/or forwarding of fresh fruits including grapes;

(d) seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses (a), (b) and (c) of this clause;

(e) apiarist;

(f) floriculturist (as defined);

(g) viticulture.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2002.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes Farming and Fruit Growing Award No. 1 of 2000 (Consolidated), No. 2 of 2000, No. 3 of 2000, No. 4 of 2000, No. 1 of 2001, No. 2 of 2001 and No. 3 of 2001.

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

6. PARTIES AND PERSONS BOUND

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

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(a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;

(b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;

(c) the following organisations of employees in respect of whom award interest has been determined:

(i) The Australian Workers' Union, Tasmania Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(ii) the Transport Workers' Union of Australia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope; and

(iii) the Woolclassers' Association of Australia and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.

(d) the following organisations of employers in respect of whom award interest has been determined:

(i) The Hop Producers' Association of Tasmania and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope;

(ii) the Tasmanian Farmers and Graziers Employers Association and the officers of that organisation and their members engaged in the industry specified in Clause 2 - Scope; and

(iii) the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Casual Employee' means a person who is engaged on an irregular basis to perform a specific task(s) over a defined time period. At the completion of such period and or task(s) the contract of employment shall be deemed to be terminated.

'Dairy Farm Employee' means a person who is engaged on a farm where the principle task(s) undertaken by the employee is that of milking of cows.

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'Farm and/or Orchard Hand Level 1'
(% Wage relativity to Farm and/or Orchard Hand Level 4 after minimum rate adjustment = 78%)

Farm and/or Orchard Hand Level 1 means a person with less that 6 months experience in the industry as specified in Clause 2 - Scope of this award who is capable of performing under supervision tasks reasonably required of an employee which may include but not be limited to some or all of the following:

* operating farm and or orchard equipment;

* collecting, grading, packing and handling of eggs;

* egg production techniques;

* poultry husbandry;

* animal husbandry;

* driving;

* stock handling;

* irrigation work;

* sorting and thinning;

* spraying;

* pruning;

* picking;

* grading

* planting

'Farm and/or Orchard Hand Level 2'
(% Wage relativity to Farm and/or Orchard Hand Level 4 after minimum rate adjustment = 84%)

Farm and/or Orchard Hand Level 2 means a person with at least 6 months experience in the industry as specified in Clause 2 - Scope of this award as a farm and/or orchard hand who is capable of performing, under limited supervision some or all of the functions of a Farm and/or Orchard Hand Level 1.

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'Farm and/or Orchard Hand Level 3'
(% Wage relativity to Farm and/or Orchard Hand Level 4 after minimum rate adjustment = 90%)

Farm and/or Orchard Hand Level 3 means a person with at least 12 months experience in the industry as specified in Clause 2 - Scope of this award as a Farm and/or Orchard Hand Level 2 and who is capable of performing efficiently without supervision any of the tasks reasonable required of him/her, which may include:

* Maintaining and operating farm and/or orchard vehicles and machinery;

* driving;

* animal husbandry;

* stock handling;

* irrigation work;

* use of chemicals;

* spraying

* pruning;

* picking;

* grading;

* sorting;

* thinning;

* planting

'Farm and/or Orchard Hand - Level 4'
(% Wage relativity after minimum rate adjustment = 100%)

Farm and/or Orchard Hand Level 4 means an employee who has successfully completed a recognized apprenticeship in a relevant trade, or completion of Certificate 2 and 3 in a relevant vocational pathway approved by the Tasmanian Agreements Committee, and using the skills obtained from that trade or pathway. This shall not restrict the employer from classifying an employee at Level 4 if that employee has achieved a certain standard of knowledge and/or competence in the industry as specified in Clause 2 - Scope of this award.

'Floriculturist' means an employer whose business involves the growing of flowers through to bloom for the retail and/or wholesale market.

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'Full-time Employee' means any person who is engaged on an ongoing full-time basis on one of the work cycles described in Clause 19 - Hours and Days of Work, subclause (a).

'Mechanical Plant Operator - Level 1'
(% Wage relativity to Farm and/or Orchard Hand Level 4 after minimum rate adjustment = 90%)

Mechanical Plant Operator - Level 1 means an employee who is required to operate mechanical plant equipment or a harvesting machine. This level does not apply to employees of employers who use the employer's machinery for the planting and harvesting of the employer's crop.

'Mechanical Plant Operator - Level 2'
(% Wage relativity to Farm and/or Orchard Hand - Level 4 after minimum rate adjustment = 95%)

Mechanical Plant Operator - Level 2 means an employee who is capable of operating a range of mechanical harvesting machines used in harvesting peas and/or broad beans and/or green beans. This level does not apply to employees of employers who use the employer's machinery for the planting and harvesting of the employer's crop.

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

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

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8. WAGE RATES

1. ADULT EMPLOYEES

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

No.	Classification	Base Rate Relativity %	Base Rate $	Safety Net Adjustment $	Weekly Wage Rate $
1.	Farm and/or Orchard Hand Level 1 (as defined)	78	325.50	106.00	431.50
2.	Farm and/or Orchard Hand Level 2 (as defined)	84	350.50	106.00	456.50
3.	Farm and/or Orchard Hand Level 3 (as defined)	90	375.50	106.00	481.50
4.	Mechanical Plant Operator Level 1 (as defined)	90	375.50	106.00	481.50
5.	Mechanical Plant Operator Level 2 (as defined)	95	396.30	106.00	502.30
6.	Farm and/or Orchard Hand Level 4 (as defined)	100	417.20	108.00	525.20

2. APPRENTICES

The minimum weekly wage rate that may be paid to apprentices shall be the undermentioned percentage of the weekly wage rate payable to Farm and/or Orchard Hand - Level 4 (as defined):

	%
1st year	42
2nd year	55
3rd year	75
4th year	88

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3. JUNIOR EMPLOYEES

The minimum weekly wage rate that may be paid to unapprenticed junior employees shall be the undermentioned percentage of the weekly wage rate for the classification Farm and/or Orchard Hand - Level 1 (as defined):

	Percentage of Adult Wage %
Under 16 years of age	55
16 to 17 years of age	65
17 to 18 years of age	75
18 to 19 years of age	85
19 to 20 years of age	95
20 years of age and over	100

4. LEADING HANDS

In addition to the wage rates prescribed in subclauses 1 and 2 of this clause, Leading Hands shall receive the following additional amounts per week:

A Leading Hand is a person:

(a)	in charge of 2 to 6 employees	$15.50 extra
(b)	in charge of 7 to 10 employees	$17.60 extra
(c)	in charge of 11 to 19 employees	$21.80 extra
(d)	in charge of 20 or more employees	$28.80 extra

5. PIECE WORK

(a) Full-time employees (as defined) and/or casual employees (as defined) may be required by the employer to work on piece-work rates.

PROVIDED that where an employer so requires an employee to work on piece-work rates then that employee shall earn at least 12 ½% more than the hourly equivalent for an employee classified as Farm and/or Orchard Hand Level 2 (as defined).

(b) Where the employer and employee agree to work on piece-work rates then the rate may be fixed by agreement.

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6. SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

(b) For the purposes of this subclause:

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

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

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

(iv) **"Assessment instrument"** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

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(c) Supported wage rates

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

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

(Provided that the minimum amount payable shall be not less than $56 per week.)

(d) Assessment of capacity

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

(i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;

(ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of assessment instrument

(i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.

(ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

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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 subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace adjustment

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

(i) Trial Period

(i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

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

(iii) The minimum amount payable to the employee during the trial period shall be no less than $56 per week or such greater amount as is agreed from time to time between the parties.

(iv) Work trials should include induction or training as appropriate to the job being trialed.

(v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

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7. TRAINEESHIP

Where an employee is engaged in a traineeship at AQF Level 3, and that trainee has not previously completed a traineeship at AQF Level 2, such employee shall be paid at the relevant classification rate prescribed for adult employees.

8. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by subclause 6 - Supported Wage System is $431.40 per week.

(ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i)

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

(c) How the Minimum Wage Applies to Juniors

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

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

(d) Application of Minimum Wage to Certain Employees

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

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(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 2002 State Wage Case Decision (T.10230 of 2002) and all previous safety net and state wage case adjustments.

9. ALLOWANCES

(a) Tool Allowance

All employees engaged in work that is normally undertaken as part of a trade under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.80 per week.

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

(b) Meal Allowance

An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of $11.90.

(c) Motor Cycle Allowance

Where an employer requires an employee to use his/her own motor cycle during the course of employment than an allowance of $1.90 per day shall be paid by the employer as well as fuel supplied.

(d) Travelling Time Allowance

An employee who on any day or from day to day is required to work away from the usual workplace shall, at the direction of the employer, present for work at such workplace at the usual starting time; but all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent travelling to and from the usual workplace) shall be paid travelling time payment at ordinary rates of pay.

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(e) Kilometreage Allowance

Where an employee is required by the employer to use his/her own motor vehicle for the purpose of the employer's business, then the employee will be paid 31 cents per kilometre travelled, with a minimum of $4.50 per day.

(f) First Aid Allowance

A full-time employee (as defined) holding first aid qualifications from the Red Cross Society, St John Ambulance or similar body and appointed by the employer to perform first aid duties shall receive in addition to his/her wages an allowance of $1.65 per day.

(g) Special Rates

Employees who are engaged in spraying, sowing or spreading of fertilisers, handling of chemicals, or threshing or cleaning seeds indoors shall be provided, by the employer, with protective clothing (including where necessary, respirators and/or goggles), and be paid 42 cents per hour extra while so engaged with a minimum payment as for 4 hours on any one day.

10. AMENITIES

(a) The employer shall where practical provide for the use of employees, suitable washing facilities, change rooms, dining accommodation and sanitary conveniences in accordance with the Industrial Safety Health and Welfare Regulations 1979.

(b) Where employees are provided with residential accommodation this accommodation shall include all facilities including hot and cold water, electricity and suitable sanitary facilities.

(c) Remote Work

An employee required to work at a location remote from the usual workplace which does not reasonably enable the employee to return to the employees' usual place of residence each evening shall be supplied free of cost suitable accommodation which shall be clean and in good repair and include hot and cold water.

That accommodation will, on the instruction of the employer, be vacated within 48 hours in the same condition as when occupied.

(d) Any dispute arising under this clause shall be dealt with in accordance with Clause 26 - Resolution of Disputes of this award.

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11. ANNUAL LEAVE

(a) Period of Leave

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

(b) Annual Leave Exclusive of Public Holidays

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

(ii) Subject to subclause (i) hereof where an employee fails (without reasonable cause, proof of which shall be supplied by the employee to the employer) to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

(c) Time of Taking Leave

The annual leave provided by this clause shall be allowed and shall be taken within 12 months of such leave falling due, at a time or times mutually agreed between the employer and employee.

PROVIDED that in the event agreement cannot be reached the employer shall give not less than one weeks notice to the employee concerned of the intention to grant such leave.

(d) Payment in Lieu Prohibited

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

(e) Proportionate Leave on Termination of Service

If after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage at 2.923 hours for each completed week of continuous service.

(f) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.

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In addition thereto, all employees, other than casual employees, before going on annual leave shall be paid a loading of 17.5% on payments made for annual leave.

(g) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree in any combination provided one period shall be not less than seven consecutive days, i.e. five working days.

(h) Calculation of Continuous Service

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

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

12. COMPASSIONATE LEAVE

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

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

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

13. CONSULTATIVE PROCEDURE

(a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the scope of this award, and to enhance the career opportunities and job security of employees in the industry.

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(b) At each enterprise or establishment, the employer, the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

(c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.

(d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.

(e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.

(f) The union reserves the right to advise its members on award issues under discussion.

(g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

(i) developing a more highly skilled workforce;

(ii) providing employees with career opportunities through appropriate training to acquire additional skills; and

(iii) removing barriers to the utilisation of skills acquired.

(h) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of the resolution of disputes clause.

14. CONTRACT OF EMPLOYMENT

(a) General

(i) Upon commencing work with an employer, all employees shall be classified at a level prescribed in Clause 8 - Wage Rates of this award.

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(ii) Further, all employees prior to the commencement of duties shall be provided with advice in writing, of the classification level to which they have been appointed, upon which they shall remain and be paid the wage rate thereof until reclassified. Further advice in writing will be issued by the employer if an employee is reclassified.

An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

This provision does not deny such employees any award entitlement which might be applicable for performing work of a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the employees' substantive classification for performing work of a lower classification.

(b) Full-time Employees (as defined)

Full-time employees as defined) shall be engaged by the week.

(c) Casual Employees (as defined)

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

(ii) The employer shall, at the time of engagement, advise the employee, to the best of the employers' ability, of the period over which they expect to be able to offer ongoing availability of work on an irregular basis and shall regularly review and update this position with the employee as changes occur.

(iii) Where it is the intention of the employer not to re-engage the employee referred to in subclause (c) (ii) hereof when work becomes available, the employer shall notify the employee in writing of such intention as soon as the decision is made.

(iv) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty eighth of the weekly rates prescribed for a full-time employee (as defined) engaged at the equivalent classification level for the work performed, plus 20%. Such additional amount to be payable in lieu of annual leave, sick leave and public holidays.

(v) If a casual employee (as defined) is not informed before leaving the job at the end of a days work that that employee is not required to work on the next day, and such employee attends work and does not commence work on that day, the employee shall be paid a minimum of 4 hours pay at the appropriate classification rate.

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(d) Termination of Employment

(i) Employment for a full-time employee (as defined) may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.

(ii) For the purpose of this clause, termination of employment shall include termination with or without notice.

(iii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for wilful misconduct or neglect of duty.

PROVIDED that any dispute or claim arising out this subclause shall be dealt with in accordance with Clause 26 - Resolution of Disputes contained within this award.

15. ENTERPRISE FLEXIBILITY

(a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.

(b) An agreement shall be subject to the following requirements:

(i) The majority of employees affected by the change must genuinely agree to the change.

(ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.

(iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.

(iv) The relevant union or unions must be a party to the agreement.

(v) The relevant union or unions shall not unreasonably oppose any agreement.

(c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:

(i) The term of the agreement.

(ii) The parties covered by the agreement.

(iii) The classes of employees covered by the agreement.

(iv) The means by which a party may retire from the agreement.

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(v) The means by which the agreement may be varied.

(vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.

(d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

16. FIRST AID

The employer shall provide and maintain, in accordance with the Industrial Health and Safety Act (1977) and Regulations (1979), a first aid outfit including an affixed listing of current employees holding a first aid certificate.

17. HOLIDAYS WITH PAY

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

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

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

(b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he/she had been at work.

(c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed elsewhere in this award.

18. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENTS

(a) Holidays

(i) Subject to the provisions of Clause 17 - Holidays with Pay, subclause (c) all employees who perform work on a holiday as prescribed in Clause 17 - Holidays with Pay shall be paid at the rate of double time and one half.

(ii) Subject to the provisions of subclause (a)(i), of this clause all employees who are required to work on any of the days prescribed in Clause 17 - Holidays with Pay shall be paid for a minimum of three hours.

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(b) Overtime - Full-time Employees (as defined) other than a dairy farm employee (as defined)

(i) Overtime for a full-time employee (as defined) shall be paid when the employee is required by the employer to work:

(1) in excess of the number of hours specified in Clause 19 - Hours and Days of Work,

(2) outside the span of hours specified in Clause 19 - Hours and Days of Work, and

(3) in excess of 8 hours unless there is agreement between the employer and the employee as prescribed in Clause 19 - Hours and Days of Work, subclauses (b) and (c).

Overtime payment shall be at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.

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

(iii) A full-time employee (as defined) shall work a reasonable amount of overtime as directed by the employer.

PROVIDED that by agreement between the employer and the employee, the employee may accrue time in lieu of the overtime payment prescribed in this clause. Such accrued time shall be calculated as time for time not at the overtime penalty equivalent and may be taken as time off in lieu at the ordinary time rate at a time mutually agreed between the employer and the employee, failing agreement, the employee shall receive payment at the overtime equivalent.

(c) Overtime, Saturday and Sunday Payment for Casual Employees (as defined) other than a dairy farm employee (as defined)

(i) For work performed on a Saturday payment shall be made at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.

(ii) For work performed on Sunday payment shall be made at the rate of double ordinary time.

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(iii) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Clause 19 - Hours and Days of Work, subclause (c), payment shall be made at the rate of ordinary time and one half for the first three hours and double time thereafter.

(d) Overtime, Saturday and Sunday Payment for Dairy Farm Employee (as defined)

(i) Full-Time Employee (as defined)

(1) Overtime for a Dairy Farm Employee (as defined) shall be paid when the employee is required by the employer to work:

(A) in excess of the number of hours specified in Clause 19 - Hours and Days of Work,

(B) outside the span of hours specified in Clause 19 - Hours and Days of Work,

(C) in excess of 8 hours unless there is agreement between the employer and the employee as prescribed in Clause 19 - Hours and Days of Work, subclause (b) and (c).

(2) For work performed on a Saturday payment shall be made at the rate of ordinary time and one quarter for the first four hours and ordinary time and one half thereafter, however, the provisions of the foregoing shall not apply to employees working in accordance with Clause 19 - Hours and Days of Work, subclause (a)(ii) and (b)(ii).

(3) For work performed on Sunday payment shall be made at the rate of ordinary time and one half for the first four hours and double ordinary time thereafter.

(4) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Clause 19 - Hours and Days of Work, subclause (c), payment shall be made at the rate of ordinary time and one half for the first three hours and double time thereafter.

(ii) Casual Employees (as defined)

(1) For work performed on a Saturday payment shall be made at the rate of ordinary time for the first four hours and ordinary time and one half thereafter.

(2) For work performed on Sunday payment shall be made at the rate of ordinary time and one half for the first four hours and double ordinary time thereafter.

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(3) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed in Clause 19 - Hours and Days of Work, subclause (c), payment shall be made at the rate of ordinary time and one half for the first three hours and double time thereafter.

(e) Call Back

An employee recalled to work overtime after leaving his employers business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 3 hours work at the appropriate rate for the first time the employee is so recalled and a minimum of 2 hours for each subsequent recall.

PROVIDED that the employee shall not be required to work the full period if the job the employee is recalled to perform is completed within a shorter period.

19. HOURS AND DAYS OF WORK

(a) (i) The ordinary hours of work for a full-time employee (as defined) shall be 38 hours per week and shall not exceed eight consecutive hours on any one day within the span of hours of 6.00am - 6.00pm, Monday to Friday inclusive and are set and may be varied by the employer from time to time.

(ii) By agreement between the employer and the majority of employees affected the ordinary hours of work for a full-time employee (as defined) may be an average of 38 hours per week provided that they not work in excess of eight consecutive hours on any day within the span of hours of 6.00am - 6.00pm and shall be worked on one of the following basis:

(1) 38 hours within a work cycle not exceeding five days in seven consecutive days; or

(2) 76 hours within a work cycle not exceeding ten days in fourteen consecutive days; or

(3) 114 hours within a work cycle not exceeding fifteen days in twenty-one consecutive days; or

(4) 152 hours within a work cycle not exceeding twenty days in twenty-eight consecutive days; or

(5) Any other work cycle agreed by an employer subject to this award and the majority of employees affected during which a weekly average of 38 ordinary hours shall be worked over the agreed work cycle.

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PROVIDED that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day

PROVIDED ALWAYS that where there is agreement between the employer and an employee the ordinary hours prescribed in subclause (b) hereof may be worked within an alternate twelve hour spread. Such agreement shall be in writing and a copy forwarded to the Branch Secretary of the Union and shall stipulate the duration of the agreement.

(b) (i) The ordinary hours of work for a dairy farm employee (as defined) shall be 38 hours per week and shall not exceed eight hours on any day and may, by agreement between the employer and employee, be worked in two periods in any one day of which one period shall be not less than three hours within the span of hours 6.00am - 8.00pm, Monday to Friday inclusive.

(ii) By agreement between the employer and the majority of employees affected the ordinary hours of work for a dairy farm employee (as defined) shall be 38 hours per week and shall not exceed eight hours on any day and may, by agreement between the employer and employee be worked in two periods in any one day of which one period shall be not less than three hours within the span of hours 6.00am - 8.00pm and shall be worked on one of the following basis:

(1) 38 hours within a work cycle not exceeding five days in seven consecutive days; or

(2) 76 hours within a work cycle not exceeding ten days in fourteen consecutive days; or

(3) 114 hours within a work cycle not exceeding fifteen days in twenty one consecutive days; or

(4) 152 hours within a work cycle not exceeding twenty days in twenty eight consecutive days; or

(5) Any other work cycle agreed by an employer subject to this award and the majority of employees affected during which a weekly average of 38 ordinary hours shall be worked over the agreed work cycle.

PROVIDED that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from 8 up to 10 hours on any day.

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PROVIDED ALWAYS that where there is agreement between the employer and an employee the ordinary hours prescribed in subclause (b) hereof may be worked within an alternate twelve hour spread. Such agreement shall be in writing and a copy forwarded to the Branch Secretary of the Union and shall stipulate the duration of the agreement.

(c) The ordinary hours for a casual employee (as defined) shall not exceed eight on any one day within the span of hours 6.00am - 9.00pm Monday to Friday inclusive and are set and may be varied by the employer from time to time.

PROVIDED that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from eight hours up to ten hours on any day.

(d) Meal Break

All employees shall be entitled to a meal interval of not less than 30 minutes not later than 5 hours after commencing work.

An employee required to continue beyond 5 hours without such an interval shall be paid at overtime rates until such time as the meal break is taken.

(e) Rest Period

All employees shall be allowed a paid rest period of 10 minutes each day.

(f) Mechanical Harvesting

Where mechanical harvesting work is carried out on a shift work basis (i.e. work performed on shifts commencing after 6.00pm and finishing before 6.00am) a shift loading of 15% shall apply for shifts of eight hours or less.

PROVIDED that where shifts greater than eight hours are worked, overtime payment at the rate of time and one half shall apply for the remainder of the hours worked between 6.00pm and 6.00am in lieu of shift loading.

The provisions of this subclause do not apply to employees of employers who use the employer's machinery for the planting and harvesting of the employer's crop.

20. LOSS OF CLOTHING DUE TO FIRE

The employer shall be responsible up to a maximum of $669.00 for an employee's clothing which may be destroyed by fire in a changing house or other shelter.

PROVIDED that such destruction is not in any way caused by the employee's own act or neglect.

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21. MIXED FUNCTIONS

An employee engaged for 2 hours or more in the aggregate on any one day performing duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for such day.

If so engaged for 2 hours or less in the aggregate during any one day the employee shall be paid the higher classification rate only for the time so worked.

22. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

(i) any period of leave taken in accordance with this clause;

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

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

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(c) Eligibility for maternity leave

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

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

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

(d) Certificate

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

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

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

(e) Notice Requirements

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

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

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

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

(f) Transfer to a safe job

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

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

(g) Variation of Period of Maternity Leave

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

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

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

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

(h) Cancellation of Maternity Leave

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

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

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(i) Special Maternity Leave and Sick Leave

(i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or

(2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

(ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.

(iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.

(iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

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

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(k) Effect of Maternity Leave on Employment

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

(l) Termination of Employment

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

(i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART B - PATERNITY LEAVE

(a) Nature of leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(i) any period of leave taken in accordance with this clause;

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

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

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(c) Eligibility for Paternity Leave

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

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

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

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

(d) Certification

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

(i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;

(ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

(1) he will take that period of paternity leave to become the primary care-giver of the child;

(2) particulars of any period of maternity leave sought or taken by his spouse; and

(3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

(i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.

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(ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:

(1) the birth occurring earlier than the expected date; or

(2) the death of the mother or the child; or

(3) other compelling circumstances.

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

(f) Variation of Period of Paternity Leave

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

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

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

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

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

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(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

(i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave.

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

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

'Spouse' includes a de facto spouse.

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

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with this clause, or

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

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(c) Eligibility

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

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

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

(1) any period of leave taken pursuant to paragraph (i) hereof; and

(2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

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

(d) Certification

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

(i) (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

(1) the employee is seeking adoption leave to become the primary care-giver of the child;

(2) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

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(e) Notice Requirements

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

(ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

(iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.

(iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave.

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

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

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

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

(g) Cancellation of Adoption Leave

(i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

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

(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

(ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

(i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

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(ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

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

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

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

(m) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

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

'Spouse' includes a de facto spouse.

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

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

(i) any period of leave taken in accordance with this clause;

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

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

(b) Entitlement

With the agreement of the employer:

(i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

(iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

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(c) Return to Former Position

(i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

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

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

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

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(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

(1) that the employee may work part-time;

(2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(3) upon the classification applying to the work to be performed; and

(4) upon the period of part-time employment.

(ii) The terms of this agreement may be varied by consent.

(iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

(iv) The terms of this agreement shall apply to the part-time employment.

(i) Termination of Employment

(i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

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

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(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

(i) limiting the number of employees who may work part-time;

(ii) establishing quotas as to the ratio of part-time to full-time employees;

(iii) prescribing a minimum or maximum number of hours a part-time employee may work; or

(iv) requiring consultation with, consent of or monitoring by a union;

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

(m) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.

(ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.

(iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iv) Unbroken service as a replacement employee shall be treated as continuous service as provided for in paragraph (a) Definitions, **'Continuous service'** of this part.

(v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

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23. PAYMENT OF WAGES

(a) For weekly employees payment of wages shall be made, on a nominated, day, either weekly or fortnightly, unless agreed between employer and employee in writing. An employee who is kept waiting for his/her pay longer than 15 minutes after the cessation of work on pay day shall be paid at ordinary time work rates for all time he/she is so kept waiting for his/her pay.

(b) For casual employees (as defined) (unless otherwise mutually arranged) payment shall be made not later than 2 hours after the cessation of work. An employee who is kept waiting for his/her pay longer than 2 hours after cessation of work shall be paid at ordinary time work rates for all time he/she is so kept waiting for his/her pay.

24. PREFERENCE OF EMPLOYMENT

(a) Preference of employment in respect to employees who are subject to this award shall, subject to anything contained elsewhere in this award, be given equally to persons who are adequately experienced and otherwise competent and who are either:

(i) members of The AWU-FIME Amalgamated Union, Tasmania Branch; or

(ii) persons who are prepared to make application to become a member of The AWU-FIME Amalgamated Union, Tasmania Branch.

(b) If more than one person described in subclause (a)(i) and (ii) of this clause make application for the employment, then the employer shall have absolute discretion to select any one or more such persons.

(c) The owner of the business, their spouse or their children shall not be subject to the provisions of this clause.

(d) Nothing in this clause shall be read as to disadvantage a Conscientious Objector holding a certificate under Section 32(9) of the Industrial Relations Act, 1984.

25. PROTECTIVE CLOTHING

(a) If an employee is required to work in sloppy or muddy conditions, water or wet under foot or in heavy rain he/she shall be provided with wet weather gear and suitable head covering, so as to protect him/her from getting wet.

(b) The employer shall supply to each employee on engagement one pair of protective footwear, and after 3 months service two pairs of overalls and thereafter replacement of clothing and protective footwear shall be on a fair wear and tear basis upon production of the unserviceable item

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(c) All other protective clothing or equipment issued must be returned clean and in good order, fair wear and tear excepted, to the employer, on completion of the job or otherwise paid for by the employee.

26. RESOLUTION OF DISPUTES

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

(a) the matter should first be discussed between the employee and the immediate supervisor. At the employee's option his/her delegate may also be present;

(b) if not settled, the matter shall be submitted by the shop steward or union representative to the industrial officer or other appropriate officer of the employer;

(c) if not settled, the matter shall be formally submitted by the State Secretary or other appropriate official of the union concerned to the employer;

(d) if not settled, the matter shall be submitted to the Tasmanian Industrial Commission for determination;

(e) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer and officials of the unions and their members, will take all possible action to settle any dispute within 7 days of notification of the dispute to the employer;

(f) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

27. RIGHT OF ENTRY

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

28. SICK LEAVE

(a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:

(i) the employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;

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(ii) the employee shall, wherever possible, inform the employer of his/her inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

(iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

(iv) the employee shall not be entitled in any year (whether in the employment of one employer or of more), to sick leave credit in excess of 2 weeks of ordinary working time;

PROVIDED that during the first three months of employment, sick leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer;

(v) for the purpose of administering paragraph (iv) of this subclause an employer may within one month of this award coming into operation or within two weeks of the employee entering employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

(b) Sick leave shall accumulate from year to year so that the balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.

(c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is terminated or resigns their employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

29. SUPERANNUATION

(a) Contributions

(i) The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, governs the superannuation rights and obligations of the Parties.

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(ii) An employer shall make an occupational superannuation contribution equivalent to the amount prescribed by Superannuation Guarantee Charge Act 1992 of ordinary time earnings (as defined) into the fund known as TASPLAN (as defined) or The Australian Farm Superannuation Plan (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause.

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

(iv) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(ii) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

'**Approved Fund**' shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'**Eligible Employee**' means an employee for whom a classification appears in this award whether employed on a full-time or casual basis.

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

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

'**The Australian Farm Superannuation Fund**' shall be an approved fund established by Trust Deed made on 23 July 1979 and approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

(c) Cessation of Contributions

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

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(d) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer in accordance with the provisions of the Industrial Relations Act 1984.

(i) For the purposes of this clause, the following companies are exempt from contributing to either TASPLAN or the AUSTRALIAN FARM SUPERANNUATION PLAN for those employees for whom contributions (equivalent to the amount nominated in subclause (a) have been made into the funds set out below on or prior to 1 January 1992.

In the case of those employees, contributions shall continue to be made in accordance with subclause (a) into the approved funds set out below:

E A Hirt & Co Pty Ltd:

- AMP Superleader Plan.

Lee Bros:

- National Mutual Personal Superannuation Plan.

R L & G L Langworthy:

- AMP Masterplan.

R H Loane Pty Ltd:

- AMP Masterplan.

Abblitt Pastoral Co Pty Ltd:

- Simple Super Fund (National Mutual).

Viewmont Pty Ltd:
Linden Pty Ltd:

- Viewmont Pty Ltd Superannuation Fund.

McKenna Bros:

- McKenna Bros Superannuation Fund.

30. TIME AND WAGES BOOK

Each employer shall keep a time and wages book in accordance with the Industrial Relations Act 1984 and Regulations.

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31. TOOLS AND EQUIPMENT

(a) The employer shall provide all tools and equipment required for the proper performance of the work by the employee. All tools and equipment supplied by the employer shall be returned to the employer during working time.

(b) Upon termination the employee shall return to the employer all tools and equipment supplied by the employer.

P L Leary
PRESIDENT

18 July 2002