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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union -**

**Tasmanian Branch**

(T11412 of 2004)

**FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER J P McALPINE

**Award variation – union name change - application approved**

**ORDER BY CONSENT**

**ICE CREAM MAKERS AWARD**

**No. 1 of 2004**

**(Consolidated)**

CLAUSES 8 AND 18 ARE VARIED AND THE AWARD IS CONSOLIDATED:

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## **1. TITLE**

This award shall be known as the "Ice Cream Makers Award".

## **2. SCOPE**

This award is established in respect of a manufacturer of ice cream or ice confectionery and incidental thereto the manufacture of pastry and pastry products.

## **3. ARRANGEMENT**

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

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

#### **5. SUPERSESION AND SAVINGS**

This award incorporates and supersedes No 2 of 2003 (Consolidated) and No. 3 of 2003.

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

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

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:-

the Liquor, Hospitality and Miscellaneous Union, Tasmanian Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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

the Tasmanian Chamber of Commerce and Industry Limited.

#### **7. DEFINITIONS**

For the purposes of this award:

General:

**'Part-time employee'** - means a permanent employee engaged for a constant number of hours per week less than the number prescribed in Clause 16 - Hours of Work - Day Workers. Except as otherwise mutually agreed, an employee shall be paid for each week that the employee is ready, willing and available to work during the hours prescribed.

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

Classifications:

### **Level One (Relativity 82%)**

#### Entry Criteria

An employee who has proven and demonstrated skills to perform at this level or has completed to the employer's satisfaction, appropriate training but may include an employee without previous experience in the industry.

#### Induction Training

New employees at this level shall undertake an induction training programme covering areas such as conditions of employment, introduction of supervisors and fellow workers, training and career paths, plant layout, work procedures, occupational health and safety, quality control and product/plant/personal hygiene.

#### General

An employee at this level shall:

- (a) understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults;
- (b) be responsible for the quality of their own work;
- (c) understand basic process control procedures;
- (d) work in a team environment and/or under routine supervision;
- (e) undertake work in a safe and responsible manner;
- (f) exercise discretion with the employee's level of skill and training;
- (g) possess basic interpersonal and communication skills.

#### Indicative Skills/Duties

Indicative of the tasks that the employee may perform at this level are:

- (a) general labouring and cleaning duties;
- (b) grounds keeping/yard duties;

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- (c) packing;
- (d) checking;
- (e) completion of relevant records and paperwork;
- (f) freezerhand as a trainee under supervision;

#### Promotional Criteria

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

#### **Level Two (Relativity 87.4%)**

##### Entry Criteria

An employee who has completed to the satisfaction of the employer, appropriate training and/or has proven and demonstrated skills to perform work at this level.

##### General

An employee at this level shall:

- (a) be able to work from simple instructions and procedures;
- (b) work under routine supervision either individually or in a team environment;
- (c) be responsible for the quality of the employee's own work subject to routine supervision;
- (d) be able to operate between different work stations;
- (e) undertake work in a safe and responsible manner;
- (f) exercise discretion within the employee's level of skills and training;
- (g) possess basic interpersonal and communication skills.

##### Indicative Skills/Tasks

In addition to the tasks/duties of a level one employee the indicative tasks that the employee may perform at this level are:

- (a) assembling machinery under direction;
- (b) operation of one or more pieces of equipment in the production process;

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- (c) receiving, despatching, distributing, sorting, documenting and recording of goods and materials in accordance with appropriate procedures;
- (d) basic inventory control in the context of the production process;
- (e) assist in the operation of all mixing equipment;
- (f) assist in the production of pastry products;
- (g) colouring and flavouring of products;
- (h) operation of forklift equipment under general supervision;
- (i) wrapping;
- (j) handling, packing and unpacking and other related duties in a cold room or warehouse;
- (k) inspecting products and materials for conformity with established operational standards;
- (l) may assist employees at level three;
- (m) may assist in the provision of on-the-job training in conjunction with supervisors/trainers.

#### Promotional Criteria

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

#### **Level Three (Relativity 92.4%)**

#### Entry Criteria

An employee who has completed to the satisfaction of the employer, appropriate training and/or has proven and demonstrated skills to perform work at this level.

#### General

An employee at this level shall:

- (a) be able to work from complex instructions and procedures;
- (b) have sound communication and interpersonal skills;
- (c) be responsible for machine set up and operation of own work station/area and quality of their own work and understands and applies quality control techniques;

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- (d) be able to coordinate the work of other employees;
- (e) have working knowledge of all related operations, processes and materials;
- (f) be able to perform work with minimal supervision;
- (g) have a sound knowledge of the employer's operations;
- (h) exercise discretion within the scope of this level.

#### Indicative Skills/Tasks

In addition to the tasks/duties of a Level two employee the indicative tasks the employee may perform at this level are:

- (a) work from production plans and schedules;
- (b) operate set up and adjust all production machinery;
- (c) routine and general machine maintenance;
- (d) inventory and store control;
- (e) operation of all pieces of equipment in the production process;
- (f) responsible for and supervision of the work of other employees;
- (g) conduct analysis and testing procedures and be responsible for this process;
- (h) operate all manual handling equipment such as a forklift, without supervision;
- (i) production of pastry products supervising other employees in this process;
- (j) conduct a range of test procedures in all fields of testing under prescribed guidelines and produce reliable and accurate results;
- (k) assist in the provision of on-the-job training.

#### Promotional Criteria

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

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## **Level Four (Relativity 100%)**

### Entry Criteria

An employee who has successfully completed a recognised trade course and is an accredited tradesperson or has successfully completed certified training and/or has demonstrated skills to the satisfaction of the employer to perform duties at this level.

### General

An employee at this level shall:

- (a) understand and accept total responsibility for a number of work stations and/or sections of the plant;
- (b) implement quality control techniques and procedures;
- (c) have a highly developed level of interpersonal and communication skills;
- (d) be able to supervise and provide guidance to other employees;
- (e) exercises discretion within the scope of this level.

### Indicative Skills/Tasks

In addition to tasks/duties of a Level Three employee, the indicative tasks that the employee may perform at this level are:

- (a) supervision and guidance to all employees in the production process and/or ancillary functions;
- (b) responsible for the efficient operation of a number of work stations and/or sections of the plant;
- (c) performs maintenance work requiring trade certification;
- (d) assist with and provides on-the-job training and induction.



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## **8. WAGE RATES**

### (a) Adult Employees

An adult employee of a classification hereunder mentioned shall be paid the amount assigned opposite that classification:

Level	Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
Level 1	82.00	342.10	94.00	436.10
Level 2	87.40	364.60	94.00	458.60
Level 3	92.40	385.50	94.00	479.50
Level 4	100.00	417.20	94.00	511.20

### (b) Juniors

The minimum rates of wages that may be paid to juniors shall be the undermentioned percentages of the total wage prescribed for employees in Classification Level 1, subclause (a) hereof:

	Percentage
Under 17 years of age	60
17 to 18 years of age	70
18 years of age and over	100

### (c) Supported Wage System

#### (i) Eligibility criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (iii) 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

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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.

- (ii) For the purposes of this subclause:
  - (1) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
  - (2) **'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.
  - (3) **'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.
  - (4) **'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.

(iii) 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 \$61 per week.

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(iv) 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:

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

(v) Lodgment of assessment instrument

- (1) 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.
- (2) 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.

(vi) 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.

(vii) 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.

(viii) 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-

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design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(ix) Trial Period

- (1) 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.
- (2) 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 (iv) and (v).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) 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 (iii) hereof.

## **9. ANNUAL LEAVE**

(a) Period of Leave

A period of one hundred and fifty two hours paid annual leave shall be allowed annually after 12 months continuous service (less the period of annual leave) to an employee in any one or more of the occupations to which this award applies.

(b) Broken Leave

Leave allowed under the provisions of subclause (a) of this clause shall be granted and taken in one consecutive period, or where the employer and employee agree, in any combination.

(c) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued.

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(d) Payment in Lieu Prohibited

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

(e) Proportionate Leave on Termination of Service

If after one month's continuous service in any qualifying 12 monthly period an employee leaves the employment or is dismissed for other than misconduct, or the employment is terminated through no fault of the employee, the employee shall be paid at the ordinary rate of pay 12.67 hours for each completed month of service.

(f) Calculation of Continuous Service

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

- (i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence.
- (ii) any absence from work on account of personal sickness or accident, and in calculating the period of 12 month's continuous service, absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service.
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee, or leave lawfully granted by the employer, but in such absence shall not be taken into account in calculating the period of 12 months' continuous service.

(g) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 15 - Holidays with pay fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such holiday so falling.

(h) 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 plus a loading of 17.5% of the amount paid in respect of annual leave.

The loading prescribed by this subclause shall not be paid in respect of proportionate leave on termination of service.

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(i) Close Down for Annual Leave

Subject to agreement being reached between the employer and the majority of employees concerned the employer may close down sections or the entire plant and employees so entitled shall be granted all or some of their annual leave entitlements.

(j) Disputes

Any dispute under this clause shall be determined by the Tasmanian Industrial Commission whose decision shall be final.

## **10. CASUAL EMPLOYEES**

A casual employee is a person who is employed for any period not exceeding 5 days at any time and shall be paid per hours one thirty-eighth of the weekly rates prescribed for the work performed and in addition for working ordinary time receive a loading of 25 per cent. This loading shall be paid in lieu of annual leave, sick leave and public holidays as prescribed elsewhere in this award.

## **11. COMPASSIONATE LEAVE**

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

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

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

## **12. CONTRACT OF EMPLOYMENT**

- (a) Except as herein provided, employment shall be by the week. Any employee not specifically employed as a casual employee shall be deemed to be employed by the week.

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- (b) An employee not attending for duty shall, except as provided in Clauses 9 - Annual Leave, 15 - Holidays with Pay and 27 - Sick Leave hereof, lose his pay for the actual time of non-attendance.
- (c) Casual employees (as defined) shall be engaged by the hour and employment may be terminated by one hour's notice by either party.
- (d)
  - (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
  - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
  - (iii) Any direction issued by an employer pursuant to paragraphs (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

### **13. EXISTING WAGE RATES**

Nothing herein contained shall be taken to reduce the wage rate of any employee who is in receipt of a higher wage rate at the date of the making of this award.

### **14. FOOTWEAR AND WORKING GARMENTS**

- (a) Employers shall provide suitable footwear to employees, who, in the course of their employment, are required to wear special footwear.
- (b) Overalls and such other outer garments as may be required and which the employer requests an employee to wear shall be supplied and maintained by the employer. Such garments shall remain the property of the employer.

### **15. 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 in Clause 7 - Definitions), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

**PROVIDED** that where Anzac Day falls on a Saturday or Sunday, the next following ordinary working day shall be observed as a holiday.

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

(c) All time worked on any holiday mentioned herein shall be paid for at the rate of double time and a half.

**PROVIDED** that where the employer and employee/s concerned so agree time off at the penalty equivalent may be allowed in lieu of part or full payment for work performed on a public holiday provided such time off shall be paid at the ordinary rate.

(d) An employee (other than a casual) shall be notified by the employer at least 7 days prior to a holiday that he or she is required to work on that holiday.

**PROVIDED** that an employee whose employment commences less than 7 days before any holiday shall be notified of such a requirement upon engagement.

**PROVIDED ALWAYS** that in case of an unforeseen emergency, the employer may notify such a requirement on less than 7 days notice. Notification of any requirement to work on a holiday shall be given to the employee personally or by posting a notice to all employees concerned in a prominent position in the employer's establishment or the relevant section or sections thereof.

(e) An employee who fails to attend for duty on a holiday after being required to work thereon in accordance with subclause (d) hereof shall not be entitled to payment under subclause (a) hereof for a holiday not worked, except where his or her absence is due to personal illness or injury, proof of which maybe required by the employer.

**PROVIDED** that where, in cases of absence mentioned above, payment for more than one holiday not worked may be involved, the employee shall be disentitled to payment only for one holiday unless the employee is absent on the actual working days both immediately preceding and succeeding the holidays.

(f) Where the employer and employee/s so agree any of the holidays mentioned in subclause (a) hereof may be worked at the ordinary rate of pay provided that another working day is substituted and taken and paid in accordance with subclause (b) hereof at a time agreed to by the employer and the employee/s concerned.

## **16. HOURS OF WORK - DAY WORKERS**

(a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

(i) 38 hours within a work cycle not exceeding seven consecutive days; or



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- (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
- (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or
- (v) 152 hours within a work cycle not exceeding twenty-eight consecutive days in establishments where the method of banking of rostered days off have been agreed to.

**PROVIDED** that the method of working ordinary hours shall best suit the business concerned.

- (b) The ordinary hours of work prescribed herein may be worked on any or all days of the week, Monday to Friday, between 6.00 am and 6.00 pm.

**PROVIDED** that the spread of hours may be altered by mutual agreement between the employer and the majority of employees in the section or sections concerned.

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

- (c) In any arrangement, ordinary working hours, where the ordinary working hours on any day are to exceed eight (8), the arrangement of hours shall be subject to the agreement of the employer and the majority of the employees in the section or sections concerned.

**PROVIDED** that the ordinary hours of work shall not exceed ten (10) on any day.

- (d) Where the employer and the employee/s agree to implement a system of rostered days off (RDO) in accordance with subclause (a)(v) hereof, employees may accrue up to a maximum of 10 RDO's per annum and be taken at a mutually agreed time.

**PROVIDED** that RDO's shall not be taken in the months of January to March and September to December in any year unless the employer decides otherwise or agreement is reached between the employer and the employee/s concerned.

- (e) Substitute Days

- (i) Where a system of RDO's applies the employer may, with the agreement of the majority of employees concerned, substitute a scheduled RDO for another day in the case of a break-down in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

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- (ii) An individual employee, with the agreement of the employer, may substitute the day to be taken off for another day.

## **17. HOURS OF WORK - SHIFT WORKERS**

### (a) Definitions

For the purposes of this clause:

**'Afternoon Shift'** means any shift finishing after 6.00 pm and at or before midnight.

**'Continuous Shift'** means work carried on with consecutive shifts of employees throughout the twenty-four (24) hours of each of at least six consecutive days without interruption except during break-downs or meal breaks or due to unavoidable causes beyond the control of the employer.

**'Night Shift'** means any shift finishing subsequent to midnight and at or before 8.00 am.

**'Rostered Shift'** means a shift of which the employee concerned has had at least 48 hours notice.

### (b) Hours - Continuous Shift Work

The ordinary hours for workers on continuous shift work shall not exceed 152 hours in twenty-eight (28) consecutive days.

**PROVIDED** that where the employer and employee/s agree, a roster system may operate to enable a weekly average of 38 ordinary hours to be achieved over a period exceeding 28 days.

Subject to the following conditions employees engaged on continuous shift work shall work at such times as the employer may require:

- (i) a shift shall consist of not more than 8 hours inclusive of crib time.

**PROVIDED** that the employer and employee/s concerned may agree that the ordinary hours of work on any day may exceed 8 hours to a maximum of 12 ordinary hours on any day.

- (ii) except at the regular change over of shifts, an employee shall not be required to work more than one shift in each twenty-four (24) hours;
- (iii) twenty (20) minutes shall be allowed to a shift worker each shift for crib which shall be counted as time worked.

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(c) Hours - other than Continuous Work

With the exception of employees engaged on continuous shift work under subclause (b) of this clause the ordinary hours of work for shift workers shall be an average of 38 per week to be worked on one of the following bases:

- (i) 38 hours within a period not exceeding seven consecutive days; or
- (ii) 76 hours within a period not exceeding fourteen consecutive days; or
- (iii) 114 hours within a period not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a period not exceeding twenty-eight consecutive days; or
- (v) 152 hours within a work cycle not exceeding twenty-eight consecutive days in establishments where the method of banking of rostered days off has been agreed to.

The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than six (6) hours without a break for a meal. Except at regular change-over of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

(d) Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

(e) Variations by Agreement

Subject to subclauses (b) and (c) hereof the method of working shifts may be varied by agreement between the employer and the majority of employees concerned.

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by seven days notice of alteration given by the employer to the employees.

(f) Afternoon Shifts

- (i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than the ordinary rate.
- (ii) A shift worker who works on an afternoon or night shift which does not continue:

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- (A) for at least 5 successive afternoons or nights in a 5 day workshop or 6 successive afternoons or nights in a 6 day workshop; or
- (B) for at least the number of ordinary hours prescribed by one of the alternative arrangements in subclauses (b) and (c) hereof:

shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof in addition to his ordinary rate.

(iii) An employee who:

- (A) during a period of engagement on shift, works night shift only; or
- (B) remains on night shift for a longer period than four consecutive weeks; or
- (C) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle;

shall during such engagement period or cycle be paid 30 per cent more than the ordinary rate for all time worked during ordinary working hours on such night shift.

(g) Saturday Shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be substitution for and not cumulative upon the shift premiums prescribed in subclause (f) hereof.

(h) Overtime

- (i) Shift workers for all time worked in excess of or outside the ordinary working hours prescribed by this award or on a shift other than a rostered shift shall;
  - (A) if employed on continuous work be paid at the rate of double time; or
  - (B) if employed on other shift work at the rate of time and a half for the first two hours and double time thereafter, except in each case when the time is worked;
  - (C) by arrangement between the employees themselves;
  - (D) for the purpose of effecting the customary rotation of shifts

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**PROVIDED** that when not less than 8 hours notice has been given to the employer by the employee who will be absent from work and the employee who should be relieved is not relieved and is required to work on a rostered day off, the unrelieved employee shall be paid double time.

(ii) Where the employer and employee/s concerned agree time off in lieu of overtime payment may be taken at the penalty equivalent.

(i) Sundays and Holidays

Shift workers on continuous shifts for work on a rostered shift the major portion of which is performed on a Sunday or holiday shall be paid as follows:

(i) Sundays - at the rate of double time;

(ii) holidays as prescribed by this clause at the rate of double time.

Shift workers on other than continuous work for all time worked on a Sunday or holiday shall be paid at the rates prescribed in this award. Where shifts commence between 11.00 pm and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate.

**PROVIDED** that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday.

Where shifts fall partly on a holiday, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(j) Daylight Saving

Notwithstanding anything contained elsewhere in this award, in any area where by reason of the legislation of the State, summer time is prescribed as being in advance of the standard time of that State, the length of any shift:

(i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; and

(ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period:

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

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## **18. MEAL AND MEAL ALLOWANCE**

- (a) Meal intervals of not less than 30 minutes and not more than one hour shall be allowed not later than 6 hours after commencing work.
- (b) An employee who having worked continuously for 6 hours and subsequently is required to work overtime for more than one and a half hours or more shall be either supplied with a meal by the employer or be paid a meal allowance of \$12.70.

## **19. MIXED FUNCTIONS**

Where an employee is called upon to perform 2 or more classes of work on any one day the employee shall, for the purpose of assessing the rate of wages to be paid, be deemed to have worked throughout the whole of his working time on that day at the class of work for which the highest rate of wage is prescribed.

## **20. OVERTIME**

- (a) For all work done outside ordinary hours, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of overtime work. Provided that employees required to work overtime on Sunday shall be paid at the rate of double time.

**PROVIDED** that an employee required to work overtime on a Saturday or Sunday to perform stock-taking duties shall be paid for a minimum of two hours work.

- (b) An employee who is recalled to work overtime after a period of one hour from the time fixed for ceasing work whether or not he has been notified before ceasing work, shall receive a minimum payment as for 4 hours worked.

In computing overtime, each day's work shall stand alone.

- (c) Subject to agreement being reached between the employer and the employees concerned time off in lieu of the penalty equivalent for overtime work may be applied provided that the time off in lieu of the overtime penalty rate is paid at the ordinary rate of pay.
- (d) Requirement to Work Reasonable Overtime
  - (i) Subject to paragraph (ii) of this subclause and subclause (c) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
  - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

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- (1) any risk to employee health and safety;
- (2) the employee's personal circumstances including any family responsibilities;
- (3) the needs of the workplace or enterprise;
- (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (5) any other relevant matter.

## **21. PARENTAL LEAVE**

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

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



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(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.

(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:

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- (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.

### (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:

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

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

(d) Certification

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

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

(e) Notice Requirements

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

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

(f) Variation of Period of Paternity Leave

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

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

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

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

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

(i) Effect of Paternity Leave on Employment

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

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(j) Termination of Employment

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

(k) Return to Work after Paternity Leave

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

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

(l) Replacement Employees

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

**PART C - ADOPTION LEAVE**

(a) Nature of Leave

Adoption leave is unpaid leave.

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(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 stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

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

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

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

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

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

(c) Eligibility

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

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



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

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

(d) Certification

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

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

(e) Notice Requirements

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

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

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(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

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

(l) Return to Work After Adoption Leave

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

(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.

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

(m) Replacement Employees

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

**PART D - PART-TIME WORK**

(a) Definitions

For the purposes of this part:

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

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

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

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

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

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

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

(b) Entitlement

With the agreement of the employer:

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

(c) Return to Former Position

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

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

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

(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.

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(f) Transitional Arrangements - Annual Leave

- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.
- (ii)
  - (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
  - (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

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

(i) Termination of Employment

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

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

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

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(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 for the purposes of paragraph (a)(v) hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

**22. PART-TIME EMPLOYEES**

Part-time employees engaged to work regularly less than 38 hours shall be paid per hour one thirty-eighth of the relevant weekly wage and shall be entitled to the annual leave, public holidays and sick leave as provided in Clause 9 - Annual Leave, Clause 15 - Holidays With Pay and Clause 27 - Sick Leave of this award.

**23. PAYMENT OF WAGES**

Payment of wages shall be made by electronic fund transfer into a financial institution account and be paid by no later than Thursday in each week. An employer shall not hold more than 2 days pay in hand.

**24. PREFERENCE OF EMPLOYMENT**

- (a) Preference of employment shall be given to members of the Liquor, Hospitality and Miscellaneous Union, Tasmanian Branch for those classifications listed in (a) - Production Employees, subclause 1 - Wages of Clause 8 provided that such preference shall extend to persons who, not being members, undertake to become and within 14 days of so undertaking, do in fact become and remain members of the aforesaid union.
- (b) **PROVIDED** that such employees are competent and suitable to carry out the work required.
- (c) Conscientious objectors shall pay a sum equivalent to the union dues to a charity nominated by the union.



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- (d) Where more than one person is applying for employment and all things are considered equal, the employer shall have freedom to select any one or more of such persons at his discretion.
- (e) This clause shall not apply to owners of businesses or their spouses or persons employed in managerial positions.

## **25. REFERENCE OF DISPUTES**

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

- (a) negotiation between the employer and the union shop steward;
- (b) where there is no shop steward available or where the dispute is not settled within the provisions of subclause (a) of this clause, by negotiation between the union and employer representatives;
- (c) failing agreement being reached within the provisions of subclause (b) of this clause, the union or the employer may refer the matter to the Tasmanian Industrial Commission for decision.
- (d) At any stage during the aforementioned procedure either party may call for a 7 day cooling-off period to examine the issue in dispute. During this period work will continue uninhibited from industrial action.
- (e) This clause shall be applied where a dispute arises out of any provision in this award requiring agreement to be reached between both employer and employee/s.

## **26. RIGHT OF ENTRY OF UNION OFFICIALS**

For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter the employer's premises during the mid-day meal break or crib time on the following conditions:

- (a) that the union official produces an authority to the gatekeeper or such other person as may be appointed by the employer;
- (b) that the union official interviews employees only at places where they are taking their meals or crib;
- (c) that if any employer alleges that a representative is unduly interfering with the work at the workplace, or is creating dissatisfaction amongst the employees or uses offensive methods, or is committing a breach of any of the previous conditions, such employer may refuse right of entry, but the representative shall have the right to bring such refusal before the Tasmanian Industrial Commission.

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**PROVIDED** that where certain employees are working under a system of shift work which precludes a representative from interviewing them during the midday meal break, the representative shall have the right to enter the employer's premises at such times and under such conditions as to notice as may be usually arranged by the representative and the employer, or failing agreement at such times and under such conditions as the Tasmanian Industrial Commission may decide.

## **27. SICK LEAVE**

(a) An employee after completing one month's continuous service with the employer, 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 is entitled to workers' compensation;
- (ii) the employee shall prior to the usual starting time of work inform the employer of the inability to attend work, and 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 the employee 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.

**PROVIDED** that an employee who has completed six month's continuous service with the employer shall be allowed two single day absences in each year without the production of such proof, provided that such single day absence shall not be taken on the working day prior or the working day after a public holidays as prescribed in Clause 15 - Holidays With pay hereof.;

- (iv) an 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;
- (v) for the purpose of administering paragraph (iv) of this sub-clause an employer may within one month of this award coming into operation or within 2 weeks of an employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

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(b) Sick leave shall accumulate from year to year so that any balance of the period specified in sub-clause (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) Sickness on Day Off

Where an employee is sick or injured on the week day to be taken off as an RDO the employee shall not be entitled to sick pay nor will the sick pay entitlement be reduced as a result of the sickness or injury that day.

## **28. SUPERANNUATION**

(a) Contribution

(i) An employer shall make a contribution equivalent to 9% of ordinary time earnings with a minimum contribution of \$1.30 per week into TASPLAN in respect of all eligible employees (as defined) from 1 July 1990.

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

(b) Definitions

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer, but excludes the spouse of the employer and children of the employer. Where an eligible employee has completed at least 3 months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

**'TASPLAN'** means the TASPLAN fund established by Trust Deed and Articles on 26 March 1990.

**'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 expense.

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## **29. WORKPLACE CONSULTATION AND ENTERPRISE FLEXIBILITY**

### (a) Workplace Consultation

- (i) A participative/consultative mechanism may be implemented at the enterprise level where agreement exists between the employer and employees concerned.
- (ii) The process of consultative practices is a process through which employees can be involved in and positively contribute towards the management decision making process. Decisions are encouraged to be reached through consultative mechanisms/practices, however managerial prerogative is acknowledged.
- (iii) The process of consultative practices may be used to implement the provisions of subclause (b) - Enterprise Flexibility of this clause.
- (iv) Where enterprise consultative committees have been agreed to be established, as far as is practicable, employers and employees shall be at least equally represented on the Committee.

### (b) Enterprise Flexibility

- (i) Notwithstanding anything contained in the agreement, 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.
- (ii) An agreement shall be subject to the following requirements:
  - (A) The majority of employees affected by the change must genuinely agree to the change.
  - (B) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (C) The relevant Union shall be advised by the employer of his or her intention to commence discussions with employees on an agreement under this clause.
  - (D) The relevant Union must be a party to the agreement.
  - (E) The relevant Union shall not unreasonably oppose any agreement.
- (iii) Any enterprise agreement shall be signed by the parties, being the employer and the Union and contain the following:
  - (A) The term of the agreement.
  - (B) The parties covered by the agreement.

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- (C) The classes of employees covered by the agreement.
  - (D) The means by which a party may retire from the agreement.
  - (E) The means by which the agreement may be varied.
  - (F) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (iv) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

P C Shelley  
**DEPUTY PRESIDENT**

11 August 2004