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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)

WIREWORRING AWARD

ORDER BY CONSENT-

No. 1 of 2004

(Consolidated)

CLAUSES 3, 4, 5, 8, 22 AND 29 ARE VARIED AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the 'Wireworking Award'.

2. SCOPE

This award is established in respect of:

- (a) making nails;
- (b) weaving wire netting and barbed wire;
- (c) galvanising
- (d) drawing wire (other than from brass, copper or other non-ferrous metals);
- (e) making wire gates; or
- (f) making chainwire mesh.

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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. SUPERSESSION AND SAVINGS

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

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

6. PARTIES AND PERSONS BOUND

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

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

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7. DEFINITIONS

In this award:

'Production Level 1 (P1) - Trainee/Labourer' means an employee entering the workforce and/or performing labouring duties and who will be provided with induction and production based training in the broad operations of the Company.

DUTIES

An employee at this level will perform basic labouring and cleaning duties.

Indicative of the tasks identified above would be:-

- general labouring
- cleaning
- assisting tradesman

RESPONSIBILITIES

An employee at this level will work under direct supervision and will exercise minimal discretion in carrying out the duties required.

QUALIFICATION

The entry level requirement for employees recruited and or operating at this level will be established by the employer. An employee will be required to demonstrate an appropriate level of literacy and numeracy.

TRAINING

Employees at this level will undertake induction training and be provided with a structured programme to develop the range of skills required at this level.

The training programme will also allow for the development over time of the skills to allow progression to P2 including:-

- 2 skills from the work skill list as determined by the employer;
- housekeeping of work area;
- skills in detection and identification of basic quality faults;
- skills in basic data gathering for statistical process control; and
- obtaining licence and becoming competent in use of forklift.

PROGRESSION

Progression to P2 will be on the basis of the employee having acquired the skill and competency standards of P2 and on being selected on merit when a position becomes available.

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'Production Level 2 (P2) employee' means an employee undertaking a broad range of production functions at a level higher than that prescribed for P1.

DUTIES

An employee undertaking production functions which require work methods that are well established and operate to clear procedures and methods.

Indicative of the tasks identified above would be:-

3 work skills determined by the employer from the attached skill register (see Appendix A to this Award);

- understanding and applying basic Total Quality Control concepts;
- working within the Quality Assurance System;
- identification of basic quality deficiencies and initiation of remedial action;
- basic data gathering for statistical process control;
- using select hand tools in machine adjustment;
- maintaining simple records; and
- assisting with training of P1 employees.

RESPONSIBILITIES

An employee at this level will competently undertake any or all of the above duties under supervision either individually or as part of a team.

QUALIFICATIONS

An employee working at this level will have the required skills and competence given appropriate training, to perform the duties required to a standard determined by the employer.

TRAINING

A structured programme of training to develop the skills required to perform competently the duties required at this level will be available and employees required to undertake and complete that programme.

The training programme may also allow for the development over time, of the skills to allow an employee to work competently at P3 level.

PROGRESSION

Progression to P3 will be on the basis of an employee at P2 obtaining the requisite skill and competency standards and on being selected on merit for a position when a position at P3 becomes available.

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'Production Level 3 (P3) employee' means an employee undertaking production functions at a level of complexity greater than that required for P2.

DUTIES

An employee undertaking production functions which require the exercise of a moderate degree of skill and who largely works to established procedures and methods but who can operate flexibly across skill areas as required by the employer.

Indicative of the tasks identified above would be:-

a minimum of 5 work skills as determined by the employer from the attached skill register (see Appendix A to this Award);

- understanding and applying Total Quality Control concepts;
- basic data gathering for statistical process control;
- able to work within the Quality Assurance System;
- identification of basic quality deficiencies and initiation of remedial action;
- maintaining records;
- using selected hand tools in documented maintenance tasks;
- assisting with the provision of on-the-job training.

RESPONSIBILITIES

An employee at this level will competently undertake any or all of the above duties under routine supervision either individually or as part of a team. A P3 employee shall be responsible under routine supervision for ensuring the quality and accuracy of their own work.

QUALIFICATIONS

An employee working at this level will have the necessary skill and competence given appropriate training to perform the duties required at this level at a standard determined by the employer.

TRAINING

A structured programme of training to develop the skills required to perform competently the duties required at this level will be available and employees required to undertake and complete that programme.

The training programme may also allow for the development, over time, of the skills to allow an employee to work competently at P4 level.

PROGRESSION

Progression to P4 will be on the basis of an employee at P3 attaining the requisite skill and competency standards and on being selected on merit for a position when a position at P4 becomes available.

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'Production Level 4 (P4) employee means an employee undertaking a broad range of production functions to the level of their training and competence and may undertake supervision of other production employees under the overall control of a Supervisor.

DUTIES

An employee undertaking production functions required at P3 which require the utilisation of advanced non-trade skills with only limited instruction and who performs the following indicative tasks:

- co-ordination and direction of other production employees;
- assisting with the provision of on-the-job training;
- understanding applying and ability to advise others on Total Quality Control concepts;
- ability to work within and provide advice to others on the Quality Assurance System;
- interpreting and working to complex instructions and procedures;
- ability to use precise measuring equipment;
- detection, recognition and correction of quality deficiencies;
- quality checks on work of other production employees;
- maintaining records; and
- using hand tools in maintenance functions.

RESPONSIBILITIES

An employee at this level will competently undertake any or all of the above duties under minimal supervision either individually or within a team and may supervise and be responsible for the work of others and may be responsible for the assessment and/or delivery of training within their area of expertise.

QUALIFICATIONS

An employee at this level will have the required technical and/or supervisory skills and competence required to perform all or any of the duties at this level.

TRAINING

A structured programme of training to develop the skills required to perform competently the duties at this level will be available and employees required to undertake and complete that programme.

The training programme may also allow for the development, over time, of the skills to allow the employee to work competently at P5 level,

PROGRESSION

Progression to P5 will be on the basis of an employee at P4 attaining the requisite skill and competency standards and on being selected on merit for a position when a position at P5 becomes available.

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'Production level 5 (P5) employee' means an employee undertaking a broad range of production functions at a level above that required at P4 and may undertake supervision of other production employees with or without the overall direction of a Supervisor.

DUTIES

An employee undertaking the total range of production functions by the utilisation of advanced non-trade skills with little or no supervision.

Indicative of the tasks identified above would be:

- coordination and direction of other production employees;
- development and delivery of on-the-job training;
- applying and ability to instruct others in Total Quality Control concepts;
- inspection of materials/products against standards;
- undertaking a range of basic documented engineering maintenance functions;
- production scheduling and materials control;
- using a wide range of hand tools;
- responsible for proper maintenance of production/maintenance records;
- preparing detailed production reports for management;
- ability to work unsupervised from complex instructions and procedures; and
- preparation and instruction of production techniques and procedures

RESPONSIBILITIES

An employee at this level will completely undertake all or any of the above duties with little or no supervision either individually or within a team and will supervise and be accountable for the work of other production employees for the assessment and/or delivery of on-the-job training of other employees.

QUALIFICATIONS

An employee at this level will have the required technical and/or supervisory skills and competence to perform the duties of this level and will have good interpersonal and communication skills and shall possess all of the work skills in the attached skill register.

TRAINING

A structured programme of training to develop the skills required to perform competently the duties at this level will be available and employees required to undertake and complete that programme.

The training programme may also allow for the development, over time, of the skills required to allow the employee to progress to management and/or perform completely Trades Level functions.

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'Trades Level 1(T1) employee' means an employee that has completed a Trade Certificate or who holds a Tradespersons Rights Certificate in a relevant discipline and who is required to exercise the skills and knowledge of those qualifications.

DUTIES

An employee undertaking trade and non-trade functions which require the exercise of trade skill and knowledge and/or advanced production skills.

Indicative of the skills identified above would be:

- performing the full range of trade level duties;
- performing non-trades work incidental to their work;
- performing work which is incidental or peripheral to the primary trade/task as required to complete the total task;
- setting up, adjusting and operating all production machinery;
- approve first-off samples;
- inspecting products and/or materials for conformity with established operational standards;
- understanding and applying the Quality Assurance System;
- understanding and applying Total Quality Control concepts.

RESPONSIBILITY

An employee at this level will possess a Trade Certificate or a Tradespersons Rights Certificate in an appropriate discipline and will possess the appropriate non-trade skills necessary to perform the range of duties required at this level.

TRAINING

A structured programme of training to develop the skills required to perform competently the duties required at this level will be available and employees required to undertake and complete that programme.

The training programme may also allow for the development over time of the skills and/or qualifications required to allow the employee to work competently at T2 level.

PROGRESSION

Progression to T2 will be on the basis of an employee at T1 attaining the requisite skill, competency and technical standards and on being selected on merit for a position when a position at T2 is available.

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'Trades Level 2 (T2) employee' means an employee who has completed 33% of a Post Trade Certificate in a relevant discipline and who exercises the skills and knowledge of those qualifications.

DUTIES

An employee undertaking trade and non-trade functions which require the exercise of trade skill knowledge at a level above that required at T1 and/or advanced production skills.

Indicative of the tasks identified above would be:

- performing the full range of trade level duties;
- performing non-trades work incidental to their work;
- performing work which is incidental or peripheral to the primary trade/task as required to complete the total task;
- setting-up, adjusting and operating all production machinery;
- approving first-off samples;
- inspecting and approving products/materials for conformity to operational standards;
- development and provision of on-the-job training within the employees area of expertise;
- understanding, applying and providing instruction in Total Quality Control concepts;
- understanding, applying and ability to instruct others in the Quality Assurance System;
- detecting, analysing and remedying quality deficiencies;
- maintaining appropriate production techniques and procedures;
- may supervise the work of production employees.

RESPONSIBILITY

An employee at this level will have completed 33% of the modules of a Post Trade Certificate in an appropriate discipline and will possess the appropriate supervisory, interpersonal and communications skills necessary to perform the range of duties required at this level.

TRAINING

A structured training programme may also allow for the development, over time, of the skills required to allow for progression to a management position.

'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.

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8. WAGE RATES

1. WAGES

An adult employee of a classification specified herein shall be paid the weekly wage rate assigned to that classification.

	Base Rate	Supplementary Payment	Weekly Wage Rate
	\$	\$	\$
P1	325.40	126.00	451.40
P2	342.10	126.00	468.10
P3	364.30	126.00	490.30
P4	385.50	126.00	511.50
P5/T1	417.20	126.00	543.20
T2	438.10	128.00	566.10

2. APPRENTICES

The minimum weekly wage rate that shall be paid to apprentices shall be the undermentioned percentages of the weekly wage rate for classification T1 as specified in paragraph 1(a) of this clause:

	%
First year	42
Second year	55
Third year	75
Fourth year	88

The wages shall be calculated to the nearest 10 cents with any amount less than five cents being disregarded.

3. JUNIORS

The minimum weekly wage rate for unapprenticed juniors shall be the undermentioned percentages of the appropriate weekly wage rate specified in paragraph 1(a) of this clause dependent upon the work being performed.

	%
Under 16 years of age	35
16 years of age	45
17 years of age	55
18 years of age	65
19 years of age	78.5
20 years of age	93

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The wages shall be calculated to the nearest 10 cents with any amount less than five cents being disregarded.

4. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the *Vocational Education and Training Act 1994* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.00 per week.

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

5. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 hereof, no adult employee shall be paid less than the rate of \$339.40 per week.
- (b) **PROVIDED** that payments for overtime, special rates, holiday and weekend penalties and shift allowances prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

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

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, program, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

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(b) For the purposes of this subclause:

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

'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.

'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.

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

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
 - (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.
- (e) Lodgment of assessment instrument
 - (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
 - (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.
- (f) Review of assessment

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

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(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 four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

9. ANNUAL LEAVE

(a) Period of Leave

(i) Day Workers

From the beginning of the first full pay period commencing on or after 21 August 1985, a period of 152 hours shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

(ii) Shift Workers

In addition to the leave hereinbefore prescribed, seven day shift workers who are rostered to work regularly on Sundays and holidays shall from the beginning of the first full pay period commencing on or after 21 August 1985 be allowed a period of 38 hours additional leave.

Where an employee with 12 months' continuous service is engaged for part of the 12 monthly period as a 7-day shift worker he shall be entitled to have the period of annual leave prescribed in paragraph (i) increased by 1/2 a day for each month he is continuously engaged.

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(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 17 - Holidays with Pay hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to the period of annual leave one day for each such holiday falling as aforesaid.

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

(c) Broken Leave

The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in up to 3 separate periods.

PROVIDED that an employee may, with the consent of the employer, take short term annual leave, not exceeding four days in any calendar year, at a time or times separate from any of the periods determined in accordance with this subclause.

(d) Calculation of Continuous Service and Special Leave

For the purpose 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, accident, holidays or duties of a public nature.

For the purpose of this clause duties of a public nature include service on jury, witness in Court of Law (but not as accused if convicted), Municipal Councillor, appearing either in the capacity of advocate or witness before the Tasmanian Industrial Commission in proceedings relating to matters affecting this award. Employees who are absent by reason of sickness or accident, and who fail to notify their foreman in reasonable time of the reason for such absence, will be liable to penalties for same.

- (iii) Any absence by an employee for a greater period than 91 days owing to sickness or accident not originating in the course of his employment in which case he shall be entitled to holidays proportionate to the time worked.

No penalty will operate where the period of absence through sickness or accident is less than 91 days.

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Any employee who desires to have time off owing to serious illness in his family is permitted to make application to the foreman of his department for leave of not less than 3 days or more than 28 days duration. This leave will be treated as a non-penalty absence provided the application is bona fide and is supported by the head of the department concerned.

PROVIDED THAT -

- (1) Employees desiring time off must apply to their foreman for leave of absence.
- (2) Employees who are absent without leave for a period in excess of 3 working days shall be deemed to have terminated their employment with the employer. Should such employees return and be engaged their annual holidays will begin to accrue as from the date of re-engagement.
- (3) Where overtime is worked, the employee will be credited with the same against absences, the total number of hours to be converted into shift or days by dividing the total by 8.

A notification given by an employee pursuant to Clause 28 - Sick Leave hereof, shall be accepted as a notification under this subclause.

Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the service for the purposes of this clause unless the employer during the absence or within 14 days of the termination of the absence notified the employee in writing that such absence will be regarded as having broken the service.

In cases of individual absenteeism such notices shall be given in writing to the employee concerned, but in cases of concerted or collective absenteeism notice may be given to employees by the posting up of a notification in the plant in the manner in which general notifications to employees are usually made in that plant and by posting to each union whose members have participated in such concerted or collective absenteeism a copy of same not later than the day it is posted up in the plant.

A notice to an individual employee may be given by delivering same to him personally or by posting it to his last recorded address, in which cases it shall be deemed to have reached him in due course by post.

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(e) Calculation of Month

For the purpose of this clause, a month shall be reckoned as commencing with the beginning of the first day of employment or period of employment in question and as ending at the beginning of the day which in the latest month in question, has the same date number as that which the commencing day had in its month and if there be no such day in such subsequent month shall be reckoned as ending at the end of such subsequent month.

(f) Leave to be Taken

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

(g) 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 and after not less than 2 weeks' notice to the employee.

PROVIDED THAT by agreement between an employer and an employee, annual leave may be taken at any time within a period of twelve months from the date at which it falls due and with less than two weeks notice to the employee.

(h) Leave Allowed Before Due Date

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

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

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(i) 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. In addition thereto, all employees, other than casual or part-time employees, shall be paid an amount equivalent to the 'Minimum Wage' as prescribed in subclause 5 of Clause 8 - Wage Rates.

(j) Proportionate Leave on Dismissal

If after one month's 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 pro rata at his ordinary rate of wage in respect of each completed month of service, being service in respect of which leave has not been granted hereunder.

(k) Annual Close Down

(i) An employer may close down his plant for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down his plant in two separate periods one of those periods shall be for a period of at least 21 consecutive days, including non-working days.

PROVIDED that where the majority of employees concerned agree, an employer may close down the plant, work section or sections in one, two or three separate periods for the purpose of granting annual leave in accordance with this subclause.

PROVIDED FURTHER that if an employer closes down his plant on more than one occasion, one of those periods shall be for a period of at least fourteen consecutive days including non-working days. In such cases, the employer shall advise the employees concerned of the proposed dates of each close down before asking them for their agreement.

(ii) An employer may close down his plant, or a section or sections thereof, for a period of at least 21 consecutive days, including non-working days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.

PROVIDED that by agreement with the majority of employees concerned, an employer may close down his plant for a period of at least fourteen consecutive days including non-working days and grant the balance of the annual leave due to an employee by mutual arrangement.

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10. APPRENTICES CONDITIONS

(a) Contract of Apprenticeship

The contract of apprenticeship shall be in accordance with the regulations made under the *Vocational Education and Training Act 1994* .

(b) Probationary Period

Minors may be employed on probation for three months and if apprenticed such three months shall count as part of their period of apprenticeship.

(c) An employee who is under 21 years of age on the expiration of his apprenticeship and thereafter works as a minor in the occupation to which he has been apprenticed shall be paid at not less than the adult rate prescribed for the classification.

(d) Overtime and Shift Work

An apprentice under the age of 18 years shall not be required to work overtime or shift work unless he so desires.

(e) Payment by Results

An apprentice shall not work under any system of payment by results.

(f) Lost Time

The apprentice at the end of the calendar period of any year in which he has actually given service to the employer upon less than the ordinary working days prescribed in the award for the trade, or on which he has unlawfully absented himself without the employers consent shall for every day short of the said number of working days, and for every day of such absence serve one day, and the calendar period of the succeeding year of his service shall not be deemed to begin until the said additional day or days shall have been served.

PROVIDED that in calculating the extra time to be served the apprentice shall be credited with the time which he has worked during the relevant year in excess of his ordinary hours.

(g) Prohibition of Premiums

An employer shall not, either directly or indirectly, or by any pretence or device receive from any person or require or permit any person to pay or give any consideration in the nature of a premium or bonus for the taking or binding of any probationer or apprentice.

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(h) Attendance at Technical School

Apprentices attending technical college or school and presenting reports of satisfactory conduct shall be reimbursed all fees paid by them.

(i) Annual and Sick Leave

Apprentices shall be entitled to the same sick and annual leave as is provided herein for adult employees in this award.

11. 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.

12. COMPULSORY OVERTIME

- (a) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.
- (b) Should any dispute arise as to what constitutes a reasonable amount of overtime in view of the circumstances then prevailing such dispute shall be referred to the Tasmanian Industrial Commission for hearing and adjudication and its decision on the matter shall be final and binding on both employer and employees.

13. CONTRACT OF EMPLOYMENT

(a) Weekly Employment

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

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- (ii) Employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the case may be, except where an employee has less than 2 weeks of continuous service, in which case one day's notice shall be sufficient and the employment shall be deemed to be from day to day. This shall not affect the right of the employer to dismiss any employee without notice for misconduct, and in such cases the wages shall be paid up to the time of dismissal only, or to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot be reasonably held responsible.
- (iii) An employee not attending for duty shall, except as provided by Clause 28 - Sick Leave hereof lose his pay for the actual time of such non-attendance.

(b) Casual Employment

- (i) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave, and public holidays.
- (ii) A casual employee is one engaged and paid as such.

(c) Late Comers

Notwithstanding anything elsewhere contained in this award an employer may select and utilise for timekeeping purposes any fractional or decimal proportion of an hour (not exceeding a quarter of an hour) and may apply such proportion in the calculation of the working time of employees who without reasonable cause promptly communicated to the employer, report for duty after their appointed starting time or cease duty before their appointed finishing times.

An employer who adopts a proportion for the aforesaid purpose shall apply the same proportion for the calculation of overtime.

(d) Part-time Employment

- (i) Part-time employees engaged to work 20 or more hours per week shall be entitled to annual leave, holidays and sick leave as prescribed in Clauses 9 - Annual Leave, 17 - Holidays with Pay and 28 - Sick Leave hereof.

PROVIDED that payment therefor shall be made at the rate normally paid to such employees for a similar period of time worked.

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The wage rates payable per hour shall be one-fortieth of the relevant rate above set out.

- (ii) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one-fortieth of the relevant rate set out, plus an additional 15%, such payment being in lieu of public holidays, annual leave and sick leave.
- (e) Duties to be Performed
- (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 including those prescribed in lower classifications 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.

14. DAMAGE TO CLOTHING AND TOOLS

Compensation to the extent of the damage sustained shall be made where in the course of the work clothing or tools are damaged or destroyed by fire or molten metal or through the use of corrosive substances.

PROVIDED that the employer's liability in respect of tools shall be limited to such tools of trade as are ordinarily required for the performance of the employee's duties.

15. DISPUTES SETTling PROCEDURE

To ensure that disputes are settled in an orderly and non-disruptive manner the following steps have been agreed upon as a disputes settling procedure. The procedure is aimed at satisfying the needs of all parties and minimising time lost through industrial issues.

- (a) Work should proceed according to past custom and practice whilst the dispute is being resolved so that there is no loss of wages nor disruption of production nor supply to customers. Delegates will accept their obligation to ensure that work proceeds as normal. In the absence of a delegate, employees will undertake to accept these obligations.

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- (b) If the continuance of work results in the creation of a safety hazard or if the continued operation of plant is threatened, then an interim method of operation will be agreed on, which does not have these negative effects. Failing agreement, the supervisors decision as to how work will proceed will be implemented, in the knowledge that the decision will require justification.
- (c) Where rank and file meetings are held, appropriate management representatives will be invited to address the meetings or alternatively have presented to the meeting a written statement representing the management's position. The purpose of this provision is to ensure full and appropriate information is made available upon which decisions may be made.
- (d) Steps Constituting the Procedure

- (i) Step 1

The details of the dispute or claim will be presented to the Supervisor. If the supervisor's immediate response is not accepted or if there is a need to further investigate the situation or to refer it to the Manager then an Industrial Report will be prepared which will include the employees version of the dispute.

It will be the supervisor's obligation to provide a response to the issue as soon as possible. If a response is not given by the end of the next ordinary shift, then he will give a progress report which will include an undertaking of the time by which a response will be given.

The response will be via the Industrial Incident Report and will contain the Manager's view where appropriate. If the delegate or representative is not in receipt of a reply by the end of the next shift, or by the agreed time, he will seek one from the Supervisor. A copy of the Industrial Incident Report will be sent to the Manager under all circumstances.

- (ii) Step 2

If the response provided by way of Industrial incident Report is not acceptable, the aggrieved person and/or delegate may seek discussion with the Manager, where all of the circumstances may be reviewed by union and Management representatives.

- (iii) Step 3

If resolution cannot be reached, then either party may refer the matter to the Tasmanian Industrial Commission whose decision shall be accepted as final.

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16. EXTRA RATES NOT CUMULATIVE

Extra rates in this award except rates prescribed in Clause 29 - Special Rates hereof, are not cumulative so as to exceed the maximum of double the ordinary rates.

17. HOLIDAYS WITH PAY

- (a) All employees (other than casuals or part-time employees mentioned in subclause (f)(ii), Clause 13 - Contract of Employment hereof) 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.

- (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.

Exceptions

- (c) An employee shall be paid at the rate of double time for work done on Sundays and double time and a half for work done on public holidays, such rates to continue until he is relieved from duty.
- (d) An employee (other than a casual employee) who works on a Sunday or a public holiday and (except for meal breaks) immediately thereafter continues such work shall, on being relieved from duty be entitled to be absent until he has had 8 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.
- (e) Employees, other than on shift or engaged in maintaining the continuity of electric light and power, required to work on Sunday or public holidays shall be paid for a minimum of 3 hours work.
- (f) When 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.

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18. HOURS OF EMPLOYMENT

- (a) As from the beginning of the first full pay period commencing on or after 21 August 1985 the ordinary hours of employment shall be an average of 38 per week to be arranged in a work cycle not exceeding 152 hours within a period of 28 consecutive days.
- (b) The ordinary hours of work prescribed shall be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am. and 6.00 pm.

PROVIDED that the actual ordinary hours of work shall be determined by agreement between an employer and the majority of employees in the plant or work section concerned.

PROVIDED FURTHER 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 purpose of this subclause to be part of the ordinary hours of work.

- (c) The ordinary hours of work prescribed herein shall not exceed ten on any day. **PROVIDED** that:
 - (i) in any arrangement or ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees in the plant or work section or sections concerned; and
 - (ii) by arrangement between an employer, the union and the majority of employees in the plant or work section or sections concerned, ordinary hours not exceeding twelve on any day may be worked subject to:-
 - (1) the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on twelve hour shifts;
 - (2) proper health monitoring procedures being introduced;
 - (3) suitable roster arrangements being made; and
 - (4) proper supervision being provided.

19. MEAL BREAKS

- (a) An employee shall not be required to work for more than five hours without a break for a meal.

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PROVIDED that:

- (i) in cases where canteen or other facilities are limited to the extent that meal breaks must be staggered and as a result it is not practicable for all employees to take a meal break within five hours an employee shall not be required to work for more than six hours without a break for a meal; and
 - (ii) by agreement between an employer and the majority of employees in the plant, work section or sections concerned, an employee or employees may be required to work in excess of five hours but not more than six hours at ordinary rates of pay without a meal break.
- (b) The time of taking a scheduled break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.
 - (c) An employer may stagger the time of taking a meal and rest break to meet operational requirements.
 - (d) Subject to the provisions of subclause (a) hereof, an employee employed as a regular maintenance man shall work during meal breaks at ordinary rates of pay whenever instructed to do so for the purpose of making good breakdown of plant or upon routine maintenance of plant which can only be done while such plant is idle.
 - (e) Except as provided in subclauses (a) and (d) hereof, and except where any alternative arrangement is entered into as a result of structural efficiency discussions as provided in Clause 30 - Structural Efficiency, time and a half rates shall be paid for all work done during meal hours and thereafter until a meal break is taken.

20. MIXED FUNCTIONS

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

21. NOTICE BOARDS

The employer shall permit a notice board of reasonable dimensions to be erected in a prominent position in his establishment, upon which accredited union representatives shall be permitted to post formal union notices, signed or countersigned by the representative posting same.

Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.

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22. OVERTIME

- (a) For all work done outside ordinary hours the rates of pay shall be time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of the overtime worked.

Except as provided in this subclause or subclause (b) hereof in computing overtime, each day's work shall stand alone.

From the beginning of the first full pay period commencing on or after 21 August 1985 the hourly rates, when computing overtime, shall be determined by dividing the appropriate rate by 38 even in cases where the employee works more than 38 ordinary hours in a week.

- (b) Rest Period After Overtime

When overtime work is necessary, it shall wherever reasonably practicable be so arranged that employees have at least a full shift off duty between work of successive days.

An employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least a full shift off duty between those times shall, subject to this subclause be released after completion of such overtime until he has had a full shift off duty without loss of pay for ordinary working time occurring during such absence.

If on the instructions of his employer such an employee resumes or continues work without having had a full shift off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had a full shift off duty without loss of pay for ordinary working time occurring during such absence.

- (c) Call Back

An employee recalled to work overtime after leaving his employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours work at the appropriate rate for each time he is so recalled.

PROVIDED that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job he was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for an employee to return to his employer's premises to perform a specific job outside his ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

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Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purpose of subclause (b) of this clause where the actual time worked is less than four hours on such recall or on each of such recalls.

(d) Saturday Work

Employees required to work overtime on a Saturday shall be afforded at least 3 hours work or paid for 3 hours at the appropriate rate except where such overtime is continuous with overtime commenced on the day previous.

(e) Standing By

Subject to any custom now prevailing under which an employee is required regularly to hold himself in readiness for a call back, an employee required to hold himself in readiness to work after ordinary hours shall until released be paid standing by time in ordinary rates from the time from which he is so to hold himself in readiness.

(f) Crib Time

An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each 4 hours of overtime worked if the employee continues work after such crib time.

PROVIDED that where an employee is required to work overtime on a Saturday the first prescribed crib time shall, if occurring between 10.00 am and 1.00 pm, be paid at ordinary rates.

Unless the period of overtime is less than 1½ hours an employee before starting overtime after working ordinary hours shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the employer shall not be required to make any payment in respect of any time allowed in excess of 20 minutes.

(g) Meal Allowance

Any employee required to continue at work on overtime for more than two hours after his ordinary ceasing time without having been notified before leaving his work on the previous day that he would be required to work overtime, shall be provided, free of cost with a suitable meal and, if the work extends into a second meal break, another meal.

PROVIDED that in the event of meals not being provided by the employer he shall pay to the employee a meal allowance at the rate of \$12.70 for the first and each subsequent meal.

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If an employee pursuant to notice has provided a meal and is not required to work less than two hours he shall be paid \$12.70 for the meal which he has provided but which is surplus.

If an employee pursuant to notice has provided a meal or meals and is not required to work overtime or is required to work less than the amount advised he shall be paid as above prescribed for meals which he has provided but which are surplus.

(h) Transport of Employees

When an employee, after having worked overtime or a shift for which he has not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer shall provide him with a conveyance to his home, or pay him his current wage for the time reasonably occupied in reaching his home.

23. 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 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.

24. PAYMENT OF WAGES

- (a) From the beginning of the first full pay period commencing on or after 21 August 1985, wages shall be paid weekly, according to the weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

Special Note - Explanation of Averaging System

If the 38-hour week is to be implemented so as to give an employee a day off in each work cycle, this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks) the employee's ordinary hours were arranged on the basis that for three of the four weeks he worked 40 ordinary hours each week and in the fourth week he worked 32 ordinary hours. That is, he would work for eight ordinary hours each day.

Monday to Friday inclusive for three weeks and eight ordinary hours on four week days only in the fourth week - a total of 19 days during the work cycle.

In such a case the averaging system may apply and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in Clause 8 - Wage Rates, and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

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In effect, under the averaging system, the employee accrued a 'credit' each day he works actual ordinary hours in excess of the daily average which would otherwise be 7 hours 36 minutes. This 'credit' is carried forward so that in the week of the cycle that he works on only four days, his actual pay would be for an average of 38 ordinary hours even though, that week, he works a total of 32 ordinary hours.

Consequently, for each day an employee works eight ordinary hours he accrues a 'credit' of 24 minutes (0.4 hours). The maximum 'credit' the employee may accrue under this system is 0.4 hours of 19 days; that is, a total of 7 hours 36 minutes.

An employee will not accrue a 'credit' for each day he is absent from duty other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, compassionate leave, or other paid absence authorised by the employer. When an employee is absent from duty because of annual leave, long service leave, public holidays, paid sick leave, workers' compensation, compassionate leave, or other paid absence authorised by the employer, his entitlement is determined in accordance with the appropriate award provision dealing with such entitlements.

(b) (i) Absences from Duty

An employee who is absent from duty (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, compassionate leave) shall, for each day he is so absent lose average pay for that day calculated by dividing his average weekly wage rate by five.

An employee who is so absent from duty for part of a day shall lose average pay for each hour or part thereof he is absent at an hourly rate calculated by dividing his average daily pay rate by eight, and for each hour or part thereof the credit will not accrue.

(ii) When such an employee is absent from duty he will not accrue a 'credit' of 3 minutes for each hour absent. Consequently, during the week of the work cycle he is to work less than 38 ordinary hours he will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the 'credit' he does not accrue for each hour during the work cycle he is absent.

The amount by which an employee's average weekly pay will be reduced when he is absent from duty (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, compassionate leave) is to be calculated as follows:

$$\text{Total of 'credits' not accrued during cycle} \times \frac{\text{average weekly pay}}{38}$$

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Examples:

(An employee's ordinary hours are arranged so that he works eight ordinary hours on five days of each week for three weeks and eight ordinary hours on four days of the fourth week).

(1) Employees takes one day off without authorisation in the first week of cycle.

Week of Cycle	Payment
1 st week	= average weekly pay less one day's pay (ie less than 1/5 th)
2 nd and 3 rd weeks	= average weekly pay each week
4 th week	= average weekly pay less credit not accrued on day of absence
	= average pay less 0.4 hours x $\frac{\text{average weekly pay}}{38}$

(2) Employee takes each of the four days off without authorisation in the 4th week.

Week of Cycle	Payment
2 nd and 3 rd weeks	= average pay each week
4 th week	= average pay less 4/5ths of average less 4/5ths of average pay for the four days absent less total of credits not accrued that week
	= 1/5th average pay less 4 x 0.4 hours x $\frac{\text{average weekly pay}}{38}$
	= 1/5th average pay less 1.6 hours x $\frac{\text{average weekly pay}}{38}$

(c) Wages to be Paid during Working Hours

Subject to subclause (d) hereof, wages shall be paid during ordinary working hours and if an employee is kept waiting for his wages on pay day after the usual time for ceasing work for more than a quarter of an hour he shall be paid at overtime rates for the period he is kept waiting, with a minimum payment for a quarter of an hour.

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(d) Day off Coinciding with Pay Day

In the event that an employee, by virtue of the arrangement of his ordinary working hours, is to take a day off on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.

PROVIDED that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(e) Payment by Cheque

Where an employer and employee agree, the employee may be paid his wages by cheque. Notwithstanding this provision, if the employer and the majority of his employees agree, all employees may be paid their wages by cheque provided that the employer, shall on pay day, if it is required by an employee, have facilities available during ordinary hours for the encashment of the cheque.

(f) Payment during First Week of Employment

On the first pay day occurring during his employment, an employee shall be paid whatever wages are due to him up to the completion of his work on the previous day; provided that this subclause shall not apply to employers who make a practice of allowing advances approximating wages due.

(g) Determination of Employment

Upon determination of the employment wages due to an employee shall be paid to him on the day of such determination or forwarded to him by post on the next working day.

Where the employee has taken a day off during the work cycle in which he employment is determined the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(h) Details of Payments to be Given

On or prior to his pay day, the employer shall state to each employee in writing the amount of wages to which he is entitled, the amount of each deduction made therefrom, and the net amount being paid to him.

(i) Wages shall be paid weekly. For day work employees the ordinary hours of work shall be 38 per week to be worked as an average of 38 per week within a 28 day cycle. **PROVIDED THAT** where the employer and the employees in the section concerned agree, and 30 days notice is given, rostered days (resulting from the averaging roster system) may be accrued where there are fluctuations in production requirements.

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25. RIGHT OF ENTRY OF UNION OFFICIALS

- (a) For the purposes of interviewing employees on legitimate union business, an officer of an organisation of employees accredited as hereinafter provided, may enter the employer's premises during midday meal or crib time of employees on each day of the week except Saturdays, Sundays and holidays on the following conditions -
- (i) That he produces his authority to the gatekeeper or such other person as may be appointed by the employer for that purpose.
 - (ii) That he interviews employees only at recognised places where they are taking their meal or crib.
 - (iii) That no one representative of each of not more than 3 unions be on the premises at any one time.
 - (iv) That no one representative visit the premises more than once in each week.
 - (v) That if the employer alleges that the representative is unduly interfering with his work or is offensive in his methods or is creating dissatisfaction amongst his employees or is committing a breach of the previous conditions, the employer may refuse the right of entry but the representative shall have the right to bring such refusal before the Secretary for Labour.

PROVIDED THAT where certain employees are working under a system of shift work on afternoon and/or night shifts, which precludes a representative from interviewing them during the midday meal break the representative may have the right to enter the employer's premises for the purpose of interviewing such employees at such time and under such conditions as to notice as may be mutually arranged by the representative and the employer.

- (b) An officer shall be a duly accredited representative of an organisation if he is the holder for the time being of a certificate which has not been cancelled or revoked, signed by the Secretary and bearing the seal of the organisation and bearing the signature of the holder.

26. SHIFT WORK

- (a) Definitions

For the purposes of this clause -

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

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'Continuous work' means work carried on with consecutive shifts of men throughout the 24 hours of each of at least 6 consecutive days without interruption except during breakdowns 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 8.00a.m.

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

(b) Hours - Continuous Work Shifts

This subclause shall apply to shift workers on continuous work as hereinbefore defined. The ordinary hours of shift workers shall average 38 per week inclusive of crib time and shall not exceed 152 hours in 28 consecutive days. Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days. Subject to the following conditions, such shift workers shall work at such times as the employer may require.

A shift shall consist of not more than ten hours inclusive of crib time.

PROVIDED THAT:

- (i) in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned; and
- (ii) by agreement between an employer, the union and the majority of employees in the plant or work section or sections concerned, ordinary hours not exceeding twelve on any day may be worked subject to:
 - (1) the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on twelve hour shifts;
 - (2) proper health and monitoring procedures being introduced;
 - (3) suitable roster arrangements being made; and
 - (4) proper supervision being provided.
- (iii) Except at the regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

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(iv) Twenty minutes shall be allowed to shift workers each shift for crib, which shall be counted as time worked.

(c) Hours - Other than Continuous Work

This subclause shall apply to shift workers not upon continuous work as hereinbefore defined. Subject to Clause 30 - Structural Efficiency, 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 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 21 consecutive days; or

(iv) 152 hours within a period not exceeding 28 consecutive days.

(v) 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 five hours without a break for a meal. Except at a regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

(vi) **PROVIDED THAT**

(1) the ordinary hours of work prescribed herein shall not exceed ten hours on any day;

(2) in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the plant or work section or sections concerned; and

(3) by agreement between an employer, the union and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding twelve on any day may be worked subject to:

(A) the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on twelve hours shifts;

(B) proper health and monitoring procedures being introduced;

(C) suitable roster arrangements being made;

(D) proper supervision being provided.

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(d) Afternoon and Night Shift Allowances

Shift workers on continuous work whilst on afternoon or night shift shall be paid 15 per cent more than the ordinary rates for such shift.

Shift workers on other than continuous work whilst on afternoon or night shifts shall be paid 15 per cent more than the ordinary rates for such shifts.

Shift workers who work on any afternoon or night shift which does not continue for at least 5 successive afternoons or nights in a 5 day workshop or at least 6 successive afternoons or nights in a 6 day workshop shall be paid at the rate of time and a half for the first 2 hours thereof and double time for the remaining hours thereof.

An employee who:

- (i) during a period of engagement on shift, works night shift only; or
- (ii) remains on night shift for a longer period than four consecutive weeks; or
- (iii) 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 percent more than his ordinary rate for all time worked during ordinary working hours on such night shifts.

- (e) The minimum rates to be paid to any shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be in substitution for and not cumulative upon shift premiums prescribed in the first and second paragraphs of subclause (d) hereof.

(f) Overtime

Shift workers, for all time worked in excess of or outside the ordinary working hours prescribed by this award or on shift other than a rostered shift shall:

- (i) if employed on continuous work; or
- (ii) if employed on other shift work, be paid at the rate of double time except in each case when the time is worked:
 - (1) by arrangement between the employees themselves;
 - (2) for the purposes of effecting the customary rotation of shifts; or
 - (3) is due to the fact that the relief man does not come on duty at the proper time; or

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- (4) on a shift to which an employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for a day in accordance with subclause (b) of Clause 13 - Contract of Employment hereof.

PROVIDED that when not less than a full shift's notice has been given to the employer by the relief man that he will be absent from work and the employee whom he should relieve is not relieved, the unrelieved employee shall be paid at the rate of time and a half for the first two hours on duty after he has finished his ordinary shift and at the rate of double time thereafter except where the employee is required to continue to work on his rostered day off when he shall be paid double time.

(g) Sundays and Holidays

Shift workers for work done on a rostered shift, the major portion of which is performed on a Sunday or holiday shall be paid 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 by Clause 17 - Holidays with Pay hereof.

Where shifts commence between 11.00pm and midnight on a Sunday or holiday the time so worked before midnight shall not entitle the employee to the Sunday or holiday rates.

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.

(h) Junior Employees

Apprentices or juniors whilst on afternoon or night shifts shall be paid not less than the rates hereinbefore prescribed, or 23 cents per shift, whichever is the higher.

27. SHOP STEWARDS

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

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28. SICK LEAVE

- (a) An employee, other than one engaged as a casual, or a part-time employee mentioned in paragraph (d)(ii) of Clause 12 - Contract of Employment hereof, who is absent from work on account of personal illness, or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, within 48 hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit from the beginning of the first full pay period commencing or after 21 August 1985, in excess of 76 hours ordinary working time.
 - (v) For the purpose of administering paragraph (iv) of this subclause an employer may within 1 month of this award coming into operation or within 2 weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and from such statement the employer shall be entitled to reply and act.
 - (vi) Sick day entitlements for part day absences shall be calculated on a proportionate basis as follows:
$$\frac{\text{duration of sick leave absence}}{\text{ordinary hours normally worked on that day}} \times \frac{\text{appropriate weekly rate}}{5}$$
 - (vii) From the beginning of the first full pay period commencing on or after 21 August 1985, where an employee is sick or injured on the week day he is entitled to take off, he shall not be entitled to sick pay nor will his sick pay entitlement be reduced.

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

Transition Period

The days of accumulated sick leave standing to the credit of each employee as at the beginning of the first full pay period commencing on or after 21 August 1985, shall be converted to hours of accumulated sick leave by multiplying the total days of sick leave accumulated as at the beginning of the first full pay period commencing on or after 21 August 1985 by eight.

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

29. SPECIAL RATES

In addition to the wages prescribed in Clause 8 - Wage Rates the following special rates and allowances shall be paid to employees -

- (a) Confined Spaces

Working in confined space, 48 cents per hour extra.

- (b) Dirty Work

Work which a foreman and workman shall agree is of an unusually dirty and offensive nature, 35 cents per hour extra.

In the case of disagreement between the foreman and workman the workman or a shop steward on his behalf, shall be entitled, within 24 hours, to ask for a decision on the workman's claim by the employer's industrial officer (if there be one), or otherwise by the employer or the executive officer responsible for the management or superintendence of the plant concerned. In such case a decision shall be given on the workman's claim within 48 hours of its being asked for (unless that time expires on a non-working day, in which case it shall be given during the next working day), or else the said allowance shall be paid.

In any case where an organisation alleges that an employer or his representative is persistently unreasonable or capricious in relation to such claims, it may bring such case before the Tasmanian Industrial Commission.

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(c) Special Rates Not Cumulative

Where more than one of the disabilities entitling a workman to extra rates exist on the same job, the employer shall be bound to pay only one rate, namely the highest rate for the disabilities so prevailing.

(d) Rates not Subject to Penalty Additions

The special rates herein prescribed shall be paid irrespective of the times at which the work is performed and shall not be subject to any premium or penalty additions.

30. STRUCTURAL EFFICIENCY

(a) The parties to this award are committed to cooperating positively to increase the efficiency, productivity and competitiveness of the industry and in so doing enhance the career opportunities and job security of employees in the industry.

(b) The employer, employees and the union shall establish a consultative mechanism and procedure appropriate to the plant. Matters raised by the employer, employees or union for consideration consistent with the objectives of subclause (a) herein shall be processed through the consultative mechanism procedures.

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

(d) Enterprise Flexibility

(i) Notwithstanding anything contained in this award, but subject to the provisions of this subclause, 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:

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

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

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

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

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- (5) The relevant union or unions shall not unreasonably oppose any agreement.
- (iii) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contain the following:
 - (1) The term of the agreement.
 - (2) The parties covered by the agreement.
 - (3) The classes of employees covered by the agreement.
 - (4) The means by which a party may retire from the agreement.
 - (5) The means by which the agreement may be varied.
 - (6) 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.
- (e) Any disputes arising in relation to the implementation of subclauses (b) and (c) herein shall be subject to the provisions of the dispute settling provision of this Award.

31. TRAINING

- (a) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of the industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:-
 - (i) developing a more highly skilled and flexible workforce;
 - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (iii) removing barriers to the utilisation of skills acquired.
- (b) Following proper consultation in accordance with subclause (b) of Clause 30 - Structural Efficiency, an employer shall develop a training programme consistent with:
 - (i) the current and future skill needs of the enterprise;
 - (ii) the size, structure and nature of the operations of the enterprise;

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- (iii) the need to develop vocational skills relevant to the enterprise through courses conducted by accredited educational institutions and providers.
- (c) (i) Where as a result of consultation in accordance with Clause 30 - Structural Efficiency with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to subclause (b) herein should be undertaken by an employee, that training may be undertaken either on or off the job. Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.
- (ii) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress.
- (d) Subclauses (b) and (c) herein shall operate as interim provisions and shall be reviewed after twelve months operation. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in subclause (a) herein.
- (e) Any disputes arising in relation to subclause (b) shall be subject to the provisions of Clause 15 - Disputes Settling Procedure.

P C Shelley
DEPUTY PRESIDENT

25 August 2004

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APPENDIX A

WIREWORRING AWARD

SKILLS LISTING

Work Skills List

Nail Production (Nail, Staple, Rumble, Pack)

Barbed Wire Production

Chain Wire Mesh Production

Fence/Gate Production (preparation, welding, wiring)

Storeman

Sales/Despatch office duties

Truck Driving (Type B licence)

Computer Skills

Fence Erection

Forklift operation