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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)

SHIPBUILDERS AWARD

No. 1 of 2004

(Consolidated)

CLAUSES 4, 5, 8, 14, 16 and 35 ARE VARIED AND THE AWARD IS CONSOLIDATED

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1. TITLE

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

2. SCOPE

This award is established in respect of the industries of:

- (a) constructing, altering or repairing ships or boats;
- (b) dunnaging of ships' holds.

3. ARRANGEMENT

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4. DATE OF OPERATION

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

5. SUPERSESION AND SAVINGS

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

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a registered organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a registered organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (ii) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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

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

7. DEFINITIONS

'Shipbuilding', for the purposes of this award shall mean any work on any ship including fitting out, constructing or repairing any steamer, lighter, punt, yacht, barge, pontoon, or any hull of like nature, constructed of wood, steel or other metal, fibreglass, or concrete or any material of a like substance used for transport purposes, or the general repairing of such vessels or any floating structure.

'Shipbuilding Industry Employee Level 1 - 78.0%'

A Level 1 employee is a person who is undertaking up to 38 hours induction training and/or who works under direct supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level is able to perform general labouring and cleaning duties which require minimal judgment.

'Shipbuilding Industry Employee Level 2 - 82.0%'

A Level 2 employee is a person who works under direct supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level may assemble components and undertake routine tasks from basic instructions by the application of selected hand tools, or by the use of basic welding techniques or the operating of elementary machinery.

'Shipbuilding Industry Employee Level 3 - 87.4%'

A Level 3 employee is a person who works under routine supervision either individually or in a team environment.

Within the limit of their skills and training an employee at this level has developed appropriate non-trade skills in the effective application of hand and power tools. Has effective measurement skills, understands inventory skills and is able to utilise a keyboard and uses all relevant lifting and mobile equipment.

'Shipbuilding Tradesperson - 100%'

This classification includes a Shipwright, Ships Carpenter and/or Joiner, or Painter.

'Ship's Carpenter or Joiner' means any employee making and fixing all joinery necessary for the fitting out of such ships and/or general repairing of same.

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'Shipwright' means an employee engaged on any work described in 'Shipbuilding' above.

'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.

8. WAGE RATES

1 - ADULT EMPLOYEES

(a) Adult employees of a classification specified hereunder shall be paid the weekly wage rate assigned to that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
SHIPBUILDING INDUSTRY				
(1) Tradesperson	100	417.20	144.00	561.20
(2) Employee Level 3	87.4	364.60	142.00	506.60
(3) Employee Level 2	82	342.10	142.00	484.10
(4) Employee Level 1	78	325.40	142.00	467.40

(b) The hourly rate is one thirty-eighth of appropriate weekly wage rate prescribed herein.

(c) Dunnaging

The minimum rate of wage that may be paid by employers to employees engaged in the dunnaging of ships during the ordinary working hours prescribed in Clause 19 - Hours, subclause (a) of this award shall be \$18.4672 per hour.

This rate is calculated as one thirty-eighth of the sum of the weekly wage rate for classification (1) Tradesperson hereof plus a tool allowance of \$8.30, multiplied by 52 and divided by 42.2.

The factor of 42.2 is computed taking into account pro rata entitlements to the following:

- 20 working days annual leave; 10 days sick leave; 11 days public holidays; 8 days for following the job.

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In addition to the hourly rate prescribed herein the following amounts shall also be paid for each hour worked:

- (i) a disability payment of 44 cents per hour; and
- (ii) an amount for annual leave loading calculated as follows:

$$\frac{\text{Minimum Wage (as prescribed in subclause 3 herein)}}{38 \times 52}$$

(d) Leading Hands

- (i) If in charge of 2 to 8 employees, shall be paid \$0.46 cents per hour extra.
- (ii) If in charge of more than 8 employees, \$0.76 cents per hour extra.

2 - APPRENTICES

The minimum weekly wage rate that may be paid to apprentices shall be the undermentioned percentages of the wage applicable to classification (1), Division 1 - Adult Employees, of this clause.

Four-year term	Percentage of Weekly Wage Rate %
First year	38
Second year	55
Third year	75
Fourth year	90

PROVIDED that the weekly wage rates for apprentices shall be adjusted to the nearest 10 cents. In addition to the rate prescribed herein there shall be added a tool allowance of \$11.50 per week which sum shall not be taken into account in the computation of overtime or any other penalty rates.

An employer who provides an apprentice with a kit of tools may deduct from the wages of the apprentice the tool allowance of \$11.50 per week until such time as the employer is reimbursed the cost of the tools. In the event of an apprentice being dismissed or leaving the employment before the cost of the tools has been reimbursed, the employer shall be entitled to deduct from any monies owing to the apprentice the amount then owing or to retain such tools as will equal the value then owing.

Tools so provided shall be kept at the employer's establishment during the usual hours of work.

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3 - MINIMUM WAGE

Notwithstanding the provisions of Division 1 - Adult Employees hereof, no adult employee shall be paid less than the rate of \$380.40 per week.

PROVIDED that payments for overtime, special rates, weekend penalties, holiday work, shift allowances, and disability allowances prescribed in this award shall 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.

4 - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

(b) For the purposes of this division:

- (i) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

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- (iii) **'Disability Support Pension'** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- (iv) **'Assessment instrument'** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(c) Supported wage rates

Employees to whom this division 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(subclause (d))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

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

(d) Assessment of capacity

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

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

(e) Lodgment of assessment instrument

- (i) All assessment instruments under the conditions of this 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.

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(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 division 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 division shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

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

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

(iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.

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

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

9. AMENITIES

Employers shall provide amenities in accordance with those prescribed in the *Workplace Health and Safety Act 1995*, and the Regulations made thereto.

10. ANNUAL LEAVE

(a) Period of Leave

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

(b) Method of Taking Leave

(i) Time of Taking Leave

Annual leave shall be given at a time agreed between the employee and the employer within a period not exceeding six months from the date when the right to annual leave accrued.

(ii) Either 28 consecutive days, or two separate periods of not less than seven consecutive days in all cases exclusive of any public holidays occurring therein the right to annual leave accrued.

(iii) Provided further that by agreement between the employer and employee leave may be taken in any other combination.

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

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

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(c) Leave Allowed Before Due Date

- (i) An employer may allow an employee to take his annual leave prior to the employee's right thereto having accrued due. In such circumstances the qualifying period of further annual leave shall not commence until the expiration of the 12 months in respect of which the leave so allowed was taken.
- (ii) Where an employer has allowed an employee to take his annual leave pursuant to subclause (a) of this clause and the employee leaves or is terminated (by whatsoever cause) prior to the employee completing the 12 months' continuous service for which leave was allowed in advance, the employer may for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment 1/52nd of the amount of wages paid on account of the annual leave.

(d) Proportionate Leave on Termination

Where an employee has given five working days or more continuous service, inclusive of any day off as prescribed by Clause 19 - Hours or Clause 33 - Shift Work, and he either leaves his employment or his employment is terminated by the employer he shall be paid 1/12th of an ordinary week's wages in respect of each completed five working days of continuous service with his current employer for which leave has not been granted or paid for in accordance with this award.

(e) Calculation of Continuous Service

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

- (i) illness or accident up to a maximum of four weeks after the expiration of paid sick leave;
- (ii) bereavement leave;
- (iii) jury service;
- (iv) injury or illness received during the course of employment and up to a maximum of 91 days for which the employee received workers' compensation;
- (v) long service leave;
- (vi) where an employee is called as a witness on behalf of Commonwealth or State;
- (vii) leave of absence not exceeding three months which has been granted where the employer is satisfied that the employee's absence is the direct result of war service;

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(viii) any reason satisfactory to the employer or in the event of dispute to the Tasmanian Industrial Commission.

PROVIDED that the reason shall not be deemed satisfactory unless the employee has informed the employer within 24 hours of the time when he was due to attend for work or as soon as practicable thereafter of the reason for the absence and probably duration thereof.

(f) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, Division 3 - Minimum Wage.

(g) Commencement of Leave - Distant Jobs

Where an employee is working at a location remote from the normal place when scheduled to commence leave the employee shall be allowed one day for travel before such leave commences.

(h) Payment in Lieu Prohibited

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

11. BEREAVEMENT 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, grandchild, 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 three 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 ALWAYS 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.

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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. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 34 - Sick Leave, of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

For the purposes of this clause part-time employees, who are not in receipt of a loading in lieu of entitlements to paid leave, shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement per annum.

Where a part-time employee's hours of work are not constant, the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

Leave may be taken for part of a single day.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
 - (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

The term '**immediate family**' includes:

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

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- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
 - (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
 - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- (b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

A part-time employee in receipt of a loading in lieu of entitlements to paid leave shall be entitled to take a maximum of one week's unpaid carer's leave per annum.

Where a part-time employee's hours of work are not constant, the employee's entitlement to unpaid carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

- (c) Grievance Process

Clause 32 - Settlement of Disputes procedure of the award also applies to a dispute about the effect or operation of this clause.

13. COMMITMENTS

- (a) Structural Efficiency Exercise

- (i) An employer may direct an employee to carry out such duties as are within the limit of the employee's skill, competence and training consistent with the classification structure of this award.

PROVIDED that such duties are not designed to promote de-skilling.

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

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- (ii) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (iii) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry and to enhance the career opportunities and job security of employees in the industry.
- (iv) Measures raised for consideration shall be related to implementation of a new classification structure and/or other relevant matters.
- (v) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility within an enterprise shall be implemented subject to the agreement of the parties to this award and subject to the following requirements:
 - (1) the parties will consider the implications of the proposed measures for existing arrangements;
 - (2) the majority of employees affected by the change at the enterprise must genuinely agree to the change;
 - (3) no employee shall lose income as a result of the change;
 - (4) any agreement which affects a provision of this award shall be subject to approval by the Tasmanian Industrial Commission.
- (vi) Award restructuring shall be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (vii) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
 - (1) developing a more highly skilled workforce;
 - (2) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (3) removing barriers to the utilisation of skills acquired.
- (viii) Any dispute arising in relation to the implementation of this clause shall be subject to the provisions of Clause 32 - Settlement of Disputes.

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(b) Award Modernisation

- (i) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- (ii) The parties commit themselves to the following principles as part of the structural efficiency process and have agreed to participate in testing a new classification structure.
 - (1) Acceptance in principle that new award skill level definitions will be more suitable for the needs of the industry, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the tasks now performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
 - (2) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
 - (3) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputation.
- (iii) The parties agree that the working party will continue to meet the aim of modernising the award.

14. DISABILITY ALLOWANCE

In addition to the wage rates prescribed in Clause 8 - Wage Rates and allowances prescribed in Clause 35 - Special Rates hereof, employees other than dunnagers engaged on work in ship and boat yards and on ship repairs shall be paid an amount of \$17.80 per week of 38 hours. Where a greater or lesser number of hours are worked in a week and for casuals payment shall be made pro rata to the rate herein prescribed.

15. DISTANT JOBS

Employees engaged on distant jobs (i.e., a job that necessitates an employee being unable to return home at night) shall be provided with all travelling expenses, accommodation and meals, together with an allowance of \$2.90 per day.

16. FIRST AID CERTIFICATE ALLOWANCE

An employee who is the holder of a current Red Cross Society, St John Ambulance or other recognised first aid certificate, shall, if required to act as a first aid attendant, be paid \$2.00 per day extra.

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17. FIRST AID EQUIPMENT

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

PROVIDED that in the case of employees required to work away from the employer's fixed work place the employer shall provide to each work group a fully maintained first aid kit.

18. HOLIDAYS WITH PAY

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

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Eight Hours' 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, or such other days as may be observed in the locality in lieu of any of the said days.

- (b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed in Clause 25 - Overtime, subclause (c) of this award.
- (d) Where the employer and the employee agree, an alternate day may be substituted for any of the holidays with pay prescribed in subclause (a) herein. In these circumstances payment for work performed on the alternate day shall be at the rates specified in Clause 25 - Overtime, subclause (c) of this award.

19. HOURS

- (a) The ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:
- (i) 7 hours 36 minutes per day, or
 - (ii) 8 hours per day on nine days and 4 hours on one day per fortnight, or
 - (iii) 8 hours per day on nineteen days with a rostered day off, or
 - (iv) 8 hours per day with an accumulation of rostered days off up to a maximum of two days.

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- (v) Such other method agreed between the employer and the majority of employees.

The actual method of implementation shall be determined by mutual agreement between the majority of employees and the employer, utilising one of the above methods.

- (b) The maximum number of ordinary hours per week in respect of which the wage rates fixed by the award shall be paid shall be an average 38 to be worked in five days of consecutive hours (excluding meal breaks) between the hours of 6.00 a.m. and 6.00 p.m., Monday to Friday inclusive.
- (c) The hours of work prescribed by this clause shall, except for the unpaid meal break specified in subclause (d) of this clause, be continuous on each day.
- (d) Meal Break

- (i) A meal break of at least 45 minutes but no more than 60 minutes shall be allowed to an employee after not more than five hours continuous work. The meal break shall be taken between the hours of 11.00 a.m. and 3.00 p.m.

PROVIDED that where there is agreement between the employer and the employee, the meal break may be reduced to 30 minutes.

PROVIDED ALWAYS where the employer and the employee agree, an employee may work for more than five hours, but no more than six hours, at ordinary rates of pay without a break for a meal to meet the circumstances of the work in hand.

- (ii) An employee shall not work for more than five hours without a meal break of at least 30 minutes except where:
 - (1) overtime is worked for a period of one hour or less after an employee's normal finishing time, or
 - (2) the employer and the employee concerned reach agreement in accordance with paragraph (i) of this subclause.
 - (iii) Subject to the exceptions mentioned in paragraph (ii) of this subclause, an employee required to work for more than five hours by the employer without a meal break shall be paid in accordance with the overtime rates specified in Clause 25 - Overtime, subclause (a) until such time as a meal break is allowed.
 - (e) The employer and the majority of employees may agree that the ordinary working hours are to exceed eight (up to a maximum of 10) on any day, thus enabling a week day off to be taken more frequently than would otherwise apply.

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- (f) If an RDO is to be substituted, three days notice (except in emergencies) shall be given to the employee and a day off in lieu at the ordinary rates at a mutually agreeable time.

In circumstances whereby a system of RDO's apply, an employer with the agreement of the employee, may in an emergency situation, substitute the day an employee is to take off for another day.

PROVIDED that such agreement will not be unreasonably withheld.

- (g) If an employee is required to work on an RDO and no day in lieu is granted, the employee is to be paid at overtime rates for the hours worked paid for the RDO.

20. JOB STEWARD

An employee appointed as a job steward shall upon notification by the union to the employer be recognised as the accredited representative of the union to which he belongs and he shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he represents.

21. JURY SERVICE

An employee required to attend for jury service shall be entitled to have his pay made up by the employer to equal his ordinary pay (inclusive of any accrual entitlements prescribed by Clause 19 - Hours or Clause 33 - Shift Work, subclause (d) of this award) whilst meeting this requirement. The employee shall give his employer proof of such attendance and the amount received in respect of such jury service.

22. MINIMUM PERIOD OF ENGAGEMENT - DUNNAGING ONLY

An employee who is engaged for work shall, if he presents himself at the job, be entitled to a minimum payment as for four hours' work at the appropriate rate.

23. MISCELLANEOUS

Grinding Tools

The employer shall provide a suitable grinding stone on every job for the use of employees, with machine or hand power for turning same.

Damage to Clothing or Tools

In the event of employees, whilst in the service of an employer, having their clothing or tools spoilt by acid, sulphur or other deleterious substance, they shall be recompensed for such loss by the employer.

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Lock-up for Tools

Employers shall provide, wherever possible, or arrange for, a suitable weatherproof place or lockup in which to store employees' tools.

Bundy Clock etc.

Where Bundy clocks or checks are in use, and where such are rung off during lunch hour, such ringing-off and on shall be done in the employer's time.

24. NOTICE OF DISMISSAL (DUNNAGING)

If an employee, not having been notified at or before 5.15 p.m. or two hours before knocking-off time on any day that he will not be required on the following day, presents himself for work on such following day, he shall be entitled to a minimum payment as for four hours at the appropriate rate for such day, except in a case where his not being required for work is due to a breakdown of machinery or other circumstances over which the employer has no control.

25. OVERTIME

- (a) All time worked outside the hours specified in Clause 19 - Hours hereof, or for work performed in excess of eight consecutive hours in each day (excluding meal breaks) shall be paid for at the rate of time and one half for the first two hours and double time thereafter; such double time to continue until completion of shift.
- (b) For employees engaged on dunnaging all overtime shall be at the rate of double time.
- (c) For all work performed on any of the holidays mentioned in Clause 18 - Holidays with Pay hereof, payment shall be made at the rate of two and one half times the ordinary rate.
- (d) In the event of an employee working for 24 consecutive hours he shall not be employed during the next 24 hours.

PROVIDED that they shall be paid for any ordinary time falling during that 24 hour period.

- (e) No employee shall work more than 24 hours overtime in any one week. For the purposes of this subclause, Saturday and Sunday shall not be regarded as part of the week and a further period of 24 hours overtime may be worked during such days. In exceptional cases, additional overtime may be worked by agreement between the employer and the employees.

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(f) Any employee who, having worked during the ordinary working hours on any day or shift is called upon to continue work in overtime, without having received on the previous day or shift, notice thereof, shall be paid an allowance of \$4.90 per meal or shall be supplied by the employer with a reasonable meal in lieu of such payment.

(g) Penalty rates for overtime shall be calculated on the ordinary rate of wage.

PROVIDED that for dunnagers overtime is calculated at double the ordinary time rate for a shipwright.

(h) Apprentices shall not be required to work during other than ordinary hours on any holidays without their consent.

(i) An employee working overtime shall be allowed a crib time of 30 minutes without deduction of pay after each four hours of overtime worked, if the employee continues work after such crib time.

Unless the period of overtime is one and a half hours or less, an employee before starting overtime after working a full ordinary shift shall be allowed a meal break of 30 minutes, which shall be paid for at ordinary rates. If a meal break is not taken and overtime exceeds one and one half hours, a paid meal break of 30 minutes shall be taken before continuing and the first break 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 employee shall not be required to make any payment in respect of any time allowed in excess of 30 minutes.

(j) Where the employer and the employee agree, time off in lieu of overtime at the penalty equivalent may be taken in lieu of overtime payments. If the agreed time off in lieu of overtime is not taken within 28 days, payment at the overtime equivalent will be made. This payment is to be made in accordance with normal pay procedures.

(k) When overtime work is necessary it shall whenever reasonably practicable, be so arranged that employees have at least nine consecutive hours off duty between the work of successive days.

An 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 nine consecutive hours off duty between those times shall, subject to this subclause be released after completion of such overtime until he has had nine consecutive hours off duty and shall be paid for the ordinary working hours that fall during such rest period.

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If on the instructions of the employer such an employee resumes or continues work without having had such nine consecutive hours off duty the employee shall be paid at double rates until the employee is released from duty for such period, and the employee shall then be entitled to be absent until the employee has had nine consecutive hours off duty and be paid for ordinary working hours falling during such rest period.

- (l) In the event of any dispute arising from the implementation of the provisions of this clause, the matter shall be referred to the Tasmanian Industrial Commission and any decision shall be final and binding on all parties.

26. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

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

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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:

- (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

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- (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.

(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.

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(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.
- (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.

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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:

- (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.

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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.
- (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:

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- (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.
- (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.

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(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.

(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.

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'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
 - (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.

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(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.
- (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.

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- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(m) 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.
- (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.

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(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.

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.

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

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(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.

27. PAYMENT OF WAGES

(a) Pay Day and Methods

- (i) On the first pay day occurring during his employment, an employee shall be paid the wages that are due to him up to the completion of his work on the previous day.
- (ii) All wages, allowances and other monies due shall be paid weekly and no later than Wednesday each week by cash, or where the employer and the majority of employees and the relevant unions at an establishment agree, by electronic funds transfer, this shall be at no cost to the employee, up to a maximum of two transactions per week including the original.
- (iii) Where electronic/direct banking is agreed the employees may elect to have their monies deposited into two accounts.
- (iv) An existing employee who believes genuine hardship will be incurred may make application for exemption. Where this occurs, the employer and the appropriate union will confer with the intent to resolving the hardship or agreeing to other arrangements.
- (v) Waiting Time Penalties

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

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(vi) Employer Responsibility

It is the responsibility of the employer to have the details of payment of wages, account number(s) and monies to cover wages by either EFT or Direct Deposit to the appropriate financial institution to enable payment as per this clause regardless of the method used by transferring of such details from pay office to financial institution.

(vii) **PROVIDED** that in any week in which a holiday falls on a Friday wages accrued shall be paid on the previous Wednesday.

PROVIDED ALWAYS that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.

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

(b) Pay Packet Details

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

- (i) date of payment;
- (ii) period covered by such payment;
- (iii) the amount of wages paid for work at ordinary rates;
- (iv) the number of hours paid at overtime rates and the amount paid therefore;
- (v) the amount of allowances or special rates paid and the nature thereof;
- (vi) the gross amount of wages and allowances paid;
- (vii) the amount of each deduction made and the nature thereof;
- (viii) the net amount of wages and allowances paid;
- (ix) any annual holiday payments;
- (x) superannuation.

(c) Payment on Termination

All wages, allowances and other monies due shall be paid in full no later than cessation of work on the final day of work.

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(d) Employee Terminating

Where an employee gives notice in accordance with Clause 37 - Termination of Employment of this award, and monies due are not paid on termination, the employer shall have two working days to send monies due by registered post.

PROVIDED that if the monies are not posted within that time then time spent waiting beyond the two working days shall be paid for at ordinary rates, such payment to be at the rate of eight hours per day up to a week's pay when the right to waiting time shall terminate.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

(e) Employer Terminating - Daily Penalties

Where an employer gives notice in accordance with Clause 37 - Termination of Employment of this award, all monies due shall be paid at termination; where this is not practicable the employer shall forward the monies due by registered post within two working days of termination and shall pay waiting time up to the time of posting at the rate of eight hours ordinary time per day up to a maximum of one week's pay.

This provision will not apply where an employer is disputing the employee's entitlement to such payment.

28. POSTING OF AWARD

A copy of this award, with all variations thereof, shall be posted and kept posted by the employer in a prominent place on the employer's premises accessible to the employees.

29. POSTING OF NOTICE

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

PROVIDED that such notice is of reasonable size.

30. RIGHT OF ENTRY

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

31. SATURDAY AND SUNDAY WORK

For all work performed on Saturday and Sunday, payment shall be made at the rate of double time.

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32. SETTLEMENT OF DISPUTES

- (a) Where an employee has submitted a request concerning any matter directly connected with his employment to a foreman or a more senior representative of management and that request has been refused, the employee may if he so desires, ask the union delegate to submit the matter to management, and the matter may then be submitted by the union delegate to the appropriate representative of the employer concerned.
- (b) If not settled at this stage, the matter may be formally submitted by the secretary of the union to the employer.
- (c) If not settled at this stage, the matter may be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of an association of employers as the employer may desire.
- (d) If the matter is still not settled, it may be submitted to the Tasmanian Industrial Commission.
- (e) Where the above procedures are being followed, work shall continue normally. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

33. SHIFT WORK

Where shifts are worked, not less than three successive working afternoons or nights on shift shall constitute shift work and shall be paid for at the rate of time and a half for the first eight hours and double time thereafter until the employee ceases work.

34. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
 - (i) an employee shall not be entitled to such leave of absence of any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of his inability to attend for work and, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

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- (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) 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 in excess of 10 days of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) of this subclause, an employer may, within one month of this award coming into operation or within two weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave, shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

35. SPECIAL RATES

In addition to the rates prescribed in Clause 8 - Wage Rates the following special allowances shall be paid, but such extra rates shall not be subject to penalty rates for overtime, Sunday or holiday pay, or shift work:

- (a) Wet places, i.e. any place where an employee's clothing or boots unavoidably become saturated, \$0.40 per hour.

PROVIDED that this extra rate shall not be payable to an employee who is provided by the employer with suitable protective clothing and/or footwear.

PROVIDED ALWAYS that any employee who becomes entitled to his extra rate shall be paid such extra rate for such part of the day or shift as he is required to work in wet clothing or boots.

- (b) Confined spaces, i.e., a small compartment or place to which access is through a manhole or similar opening or when work is done in a stooping or otherwise cramped or uncomfortable position, \$0.49 per hour extra whilst so engaged.

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PROVIDED that when a ship's hold is plugged and entry is through the Booby Hatch, an amount of \$0.51 per hour shall be paid to employees for work performed in ships' holds and decks, or when 'black' hatches are required to be worked on all decks.

- (c) (i) Dirty Work - Employees who are required to work on repairs in smoke boxes, uptake, funnel, flue, furnace, or combustion chambers of boilers or on machine sanders or in oil tanks, previously used dunnage or who are required to handle insulwool or on work which the management agrees is of an unusually dirty or offensive nature, shall be paid \$0.40 per hour extra.
- (ii) Acid Work - Employees who are required to work in acid tanks or inside acid retorts shall be paid \$1.04 per hour extra.
- (d) Employees who in the course of their employment are required to handle silicate of cotton, coal, dust, slag, wool, alfol, charcoal, fibreglass, pumice, lamp black, calcine, pitch-blend, pipe clay, soda ash, or in the laying of corticene involving the fixing of it to decks by the use of tallow and resin solution or other adhesive medium, shall be paid \$0.40 per hour extra.
- (e) Employees working amongst frozen cargo or in temperatures of less than 2.2 degrees Celsius (in freezing room) shall be paid an additional amount of \$0.37 per hour extra.
- (f) Where the circumstances arise wherein a class of employee mentioned in this award is required to perform work of a like nature or under the same conditions as other classes of waterfront employees and a special rate for such work has been determined by the Australian Industrial Relations Commission or Board of Reference, the extension of such payment shall be made to employees mentioned in this award by application to the Tasmanian Industrial Commission. In the event of a dispute arising in relation to the provisions of this subclause, the matter may be referred to the Tasmanian Industrial Commission for adjudication and the decision thereon shall be final and binding.
- (g) Rates prescribed in this clause are not cumulative, and where an employee is engaged on work for which more than one special rate is prescribed, the employee shall be entitled to only one, i.e., the highest, for the disabilities so prevailing.

36. SUPERANNUATION

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

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- (ii) An employer shall make an occupational superannuation contribution for all eligible employees (as defined) equivalent to the amount prescribed by the *Superannuation Guarantee Charge Act 1992* of ordinary time earnings (as defined) into one of the following funds:-
 - (1) TASPLAN (as defined);
 - (2) Superannuation Trust of Australia scheme established by Trust Deed;
 - (3) Construction and Building Unions Superannuation Scheme established by Trust Deed; or
 - (4) Any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause.
- (iii) Contributions to the fund shall be made by the employer on behalf of an eligible employee on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
- (iv) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in paragraph (a)(ii) of this clause paid into the fund known as C.I.S. Superannuation Deed B R 1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

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

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

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

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

(c) Cessation of Contributions

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

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(d) Exemptions

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

37. TERMINATION OF EMPLOYMENT

- (a) In the case of employees engaged by the week the following provisions shall apply:
- (i) Subject to the provisions of paragraph (ii) hereof a week's notice of the termination of engagement shall be given by either side or one week's wages shall be paid or forfeited in lieu thereof. Notice may be given on any day during the week to terminate the engagement whether on the corresponding day of the following week, or on any later day of the following week.
 - (ii) The employer may dismiss any employee summarily without notice for malingering, idling, inefficiency, neglect of duty including going slow, or misconduct, whereupon he shall pay the employee's wages up to the time of dismissal.
- (b) In the case of employees engaged for dunnaging or as casuals, one hour's notice of the termination of the engagement shall be given on either side or one hour's pay shall be paid or forfeited in lieu thereof. In the case of the notice being given by the employer, such hour shall be allowed to the employee to gather, clean, pack and transport his tools to his home.

38. TOOLS

Employees shall provide all hand tools including auger bits up to 1-inch diameter and twist drills up to 1/2-inch diameter and shall be paid a tool allowance of \$11.50 per week which sum shall not be taken into account in the computation of overtime and other penalty rates.

39. TRAVELLING TIME

- (a) When an employee is required to work at a place other than his usual place of work he shall be paid his ordinary rate of wage for all time reasonably occupied in travelling to and from the place at which he is so required to work in excess of the time ordinarily occupied in travelling to and from his usual place of work. All fares necessarily incurred in so doing shall be paid by the employer.
- (b) When an employee is required to work beyond a time when public transport is available, the employer shall be required to provide transport, or meet the cost of transport to the employee travelling to his home. Where an employee uses his own means of transport, he shall be paid a distance allowance of 27.5 cents per kilometre travelled on his return to home by the most direct road route.

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- (c) Where an employee is required to work at a distance of 40 kilometres or more away from the headquarters of the employer and his work concludes on or after 10.00 p.m., the employer shall reimburse the employee for expenses incurred in meeting the cost of overnight accommodation.

Tim Abey
COMMISSIONER

20 August 2004