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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)

RETAIL PHARMACY AWARD

No. 1 of 2004 (Consolidated)

PART I – CLAUSES 4 AND 6 ARE VARIED; PART III – CLAUSES 1, 2 AND 10 ARE VARIED;
PART IV – CLAUSE 3 IS VARIED, AND THE AWARD IS CONSOLIDATED:

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PART I - APPLICATION AND OPERATION OF THE AWARD

1. TITLE

This award shall be known as the "Retail Pharmacy Award".

2. INDEX

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3. SCOPE

This award is established in respect of the Retail Pharmacy Industry which shall mean any business conducted by the employer in premises:-

- (a) that are registered under the *Pharmacy Act 1908*; and
- (b) that are established either in whole or in part for the compounding or dispensing of prescriptions or for vending any medicines or drugs; and
- (c) where other goods may be sold by retail.

PROVIDED that this award shall not apply to any employer bound by any of the following awards:

- (i) the Hairdressing, Health and Beauty Industry Award; and
- (ii) the Health and Fitness Centres Award.

4. DATE OF OPERATION

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

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5. AWARD INTEREST

- (a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- (i) The Association of Professional Engineers, Scientists and Managers, Australia;
 - (ii) Shop, Distributive and Allied Employees Association, Tasmanian Branch
- (b) The following employer organisation has an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- The Pharmacy Guild of Australia, Tasmanian Branch;
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:
- the Tasmanian Chamber of Commerce and Industry Limited;
- (d) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:
- the Tasmanian Trades and Labor Council.

6. SUPERSESSION

This award incorporates and supersedes the Retail Pharmacy Award No. 1 of 2003 (Consolidated) and No. 2 of 2003.

PROVIDED that no right, obligation or liability incurred or accrued under the abovementioned awards will be affected by the replacement or supersession.

7. GENERAL DEFINITIONS

“Competency Standards” shall mean Competency Standards for Pharmacy Assistants endorsed by the National Training Board in November 1993.

‘Product knowledge’ shall mean the product knowledge requirements included in the National Training Course for Pharmacy Assistants.

‘The Act’ shall mean the *Pharmacy Act 1908* as amended.

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PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

1. DEFINITIONS

'Casual employee' shall mean an employee engaged on an irregular basis to meet short-term labour needs within a retail pharmacy.

'Full Time Employee' shall mean an employee who is employed in accordance with the hours of work specified in Part V - Hours of Work, Penalty Payments And Overtime, Clause 1 - Hours of Work.

'Part-time employee' shall mean an employee who is employed on a continuing basis for less hours per day or per week than those applicable for full-time employees.

2. EMPLOYMENT CATEGORIES

(a) General

An employee shall be engaged as a full-time, part-time or casual employee subject to the following:

A full-time or part-time employee shall be engaged by the week, fortnight or month as agreed between the employer and the employee prior to engagement.

(b) Casual

(i) A casual employee (as defined) for working ordinary hours shall be paid per hour one thirty-eighth of the appropriate weekly wage rate set out in Part III - Wages and related Matters, Clause 1 - Wage Rates. In addition thereto a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and holidays with pay.

(ii) A casual employee shall be entitled to a minimum of three hours pay in respect of each engagement, unless varied by agreement between the employer and employee prior to the employee commencing employment.

PROVIDED that where the pharmacy (as defined) is opened for a trading period of less than 3 hours, a pharmacy assistant shall be entitled to a minimum payment based on the duration of the actual trading period.

(iii) A casual employee shall be employed for a period of time agreed between the employer and the employee subject to the minimum provisions of this award.

(iv) A casual pharmacist manager will be graded as follows:

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- (1) for all hours worked between the hours of 9.00 am and 6.00 pm Monday to Friday - in accordance with subclause (b) of the definition of "Pharmacist Manager" appearing in Part III - Wages and Related Matters, Clause 3 - Classification Descriptors; and
 - (2) for all other hours - as a Pharmacist-in-Charge (as defined), Grade 1.
- (v) A casual pharmacist-in-charge will be graded as follows:
- (1) for all hours worked between the hours of 9.00 am and 6.00 pm Monday to Friday - in accordance with subclause (c) of the definition of 'Pharmacist-in-Charge' appearing in Part III - Wages and Related Matters, Clause 3 - Classification Descriptors.
 - (2) for all other hours - as a Pharmacist-in-Charge (as defined), Grade 1.
- (vi) Penalty payments prescribed elsewhere in this award are applicable to casual employees. The 20 per cent loading prescribed elsewhere in this clause shall be paid for all hours worked including times when penalty payments are applicable.

PROVIDED that all penalty additions shall be calculated on the ordinary time rate excluding this loading. Viz:

Time and one quarter equates to 1.45)	
Time and one half equates to 1.7)	of the ordinary time rate
Double time equates to 2.2)	

(c) Part-time

- (i) A part-time employee shall be paid for each hour worked one thirty-eighth of the appropriate weekly wage rate and shall be entitled to receive annual leave, sick leave and holidays with pay in the same proportion as their ordinary hours bear to 38.

PROVIDED that by agreement (in writing) between the employer and an employee, a loading of 20% may be paid in lieu of pro-rata entitlements to annual leave, sick leave and holidays with pay.

- (ii) A part-time employee who elects to receive the 20% in lieu of pro rata entitlements will be entitled, on application, to leave without pay to a maximum of 4 weeks for each year of employment to be taken at a time mutually agreed between the employer and employee.

(d) Employer Obligation

At the time a full-time or part-time employee is engaged, the employer will confirm in writing to the employee at least the following details:-

- (i) the commencement date of employment;

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- (ii) whether the contract of employment is full-time or part-time; and
 - (iii) the classification and wage rate of the employee at commencement
- (e) Job Description
- (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
 - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- This provision does not deny such employees any award entitlement which might be applicable for performing work of a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the employees' substantive classification for performing work of a lower classification.
- (iii) Any direction issued by an employer pursuant to subclause (g) and (h) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

3. TERMINATION

- (a) During the first four weeks of engagement, employment may be terminated by the giving of 1 hour's notice on either side or by the payment or forfeiture of an amount equal to one hour's ordinary time, as the case may be.
- (b) During the next five months of an employee's engagement, employment may be terminated by the giving of one week's notice on either side, or by the payment or forfeiture of an amount equal to one week's ordinary time, as the case may be.
- (c) (i) Employment that continues beyond the period referred to in subclause (b) and (c) hereof shall be in accordance with the terms of engagement as set out in subclause (a) of this clause.
- (ii) Further to paragraph (i) of this subclause, employment may be terminated by either side by the giving of notice in accordance with the following table:

<u>Terms of Employment</u>	<u>Period of Notice (ordinary time)</u>
Weekly	1 week
Fortnightly	2 weeks
Monthly	1 month

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or by the payment or forfeiture of an amount equal to the period of notice, as the case may be.

- (d) These provisions shall not affect the right of the employer to dismiss an employee without notice for neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only.
- (e) The employer in the event of misconduct may suspend an employee without pay. The maximum period of suspension shall be one week. Prior to the implementation of a suspension, the appropriate union shall be advised of the intention to undertake such suspension. In the event that a union official cannot be contacted, the suspension will not be implemented for a period of at least 24 hours.

Should the employee not agree to the suspension the union shall have the right to refer the matter to the Tasmanian Industrial Commission. If upon examination the Tasmanian Industrial Commission forms the view that the suspension was harsh or unjust, it may vary the term of or rescind the suspension. Nothing in this subclause shall affect the right of the employer to dismiss an employee in accordance with the previous subclause.

PART III - WAGES AND RELATED MATTERS

1. WAGE RATES

- (a) The minimum weekly wage rate for employees classified in accordance with Part III – Wages and Related Matters, Clause 3 – Classification Descriptors shall be as follows:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Pharmacist Manager (as defined)				
Grade 1	180	751.00	138.00	889.00
Grade 2	195	813.50	138.00	951.50
Grade 3	210	876.10	138.00	1014.10
Pharmacist-in-charge (as defined)				
Grade 1	160	667.50	138.00	805.50
Grade 2	170	709.20	138.00	847.20
Grade 3	180	751.00	138.00	889.00

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Pharmacist (as defined)

1st year experience	140	584.10	142.00	726.10
Thereafter	150	625.80	142.00	767.80
Student				
First year	*70	272.50	142.00	414.50
Second year	*80	300.30	142.00	442.30
Third year	*90	342.10	142.00	484.10
Fourth year	*95	356.10	142.00	498.10
Trainee				
1st half of traineeship	*100	390.80	142.00	532.80
2nd half of traineeship	*115	438.60	142.00	580.60

*At the conclusion of relativity process the base rate formula will be – Base Rate \$417.20 = 100% Base Rate Relativity

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Pharmacy Assistant	92	366.00	142.00	508.00
Grade 1 - unqualified - qualified	97	386.00	142.00	528.00
Grade 2	102	406.00	142.00	548.00
Grade 3	106	426.00	144.00	570.00
Grade 4	111	446.00	144.00	590.00

(b) Junior Pharmacy Assistants

Pharmacy assistants under the age of twenty-one years shall receive the following percentage of the appropriate grade for the level at which they are employed:

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	%
Under 16 years of age	45
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

- (c) Hourly rates shall be calculated by dividing the appropriate weekly wage rate by 38.

2. SUPPORTED WAGE SYSTEM

- (a) Eligibility criteria

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

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

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

- (b) For the purposes of this subclause:

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

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

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

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

(d) Assessment of capacity

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

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

(h) Workplace adjustment

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

(i) Trial Period

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

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

(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 paragraph (iii) hereof.

3. CLASSIFICATION DESCRIPTORS

PHARMACISTS:

'Pharmacist' means a person who is registered by the Pharmacy Board of Tasmania.

The registered pharmacist commencement level. A pharmacist (as defined) works under the general direction of a pharmacist-in-charge (as defined), a pharmacist manager (as defined) or a proprietor.

Duties and responsibilities shall include, but shall not be limited to:

Dispensing prescriptions in accordance with the Pharmacy regulations, counselling patients as required, PBS return preparation, computer housekeeping, dispensing stock control, cashing up and locking and unlocking the pharmacy (as defined) (as required).

'Pharmacist-in-Charge' means a pharmacist (as defined) who is responsible for limited management of a retail pharmacy practice.

- (a) A pharmacist-in-charge is employed as the pharmacist in charge of a retail pharmacy, either as the sole pharmacist (as defined) employed in the business or as a pharmacist in charge of other employed pharmacists and is responsible for both front-of-shop and dispensary supervision. A pharmacist-in-charge (as defined) is subject to the overall direction of a proprietor or a pharmacist manager (as defined).
- (b) Duties and responsibilities shall include, but are not limited to:
 - (i) Performing all the duties of a pharmacist (as defined);
 - (ii) Locking and unlocking of the pharmacy (as defined), lunchtime supervision arrangements, debtor control, rostering of staff, banking preparation, delivery supervision, repairs and maintenance, public relations and in-store promotions.

The proprietor or pharmacist manager (as defined) will retain the responsibility for hiring and firing of staff, full business administration and profit, performance and strategic planning.

- (c) A Pharmacist-in-charge (as defined) will be graded as follows:
 - (i) Grade 1 - in charge of or manages a small pharmacy (as defined) where the equivalent full-time staff (EFTS) is less than 2.

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- (ii) Grade 2 - in charge of or manages a large pharmacy (as defined) where the EFTS is 2 (or greater) but less than 4.
- (iii) Grade 3 - in charge of or manages a large pharmacy (as defined) where the EFTS is 4 or more.
- (iv) The number of Equivalent Full-Time Staff (EFTS) is calculated as follows: $a/b = c$

Where a = the total number of hours ordinarily worked by staff in the pharmacy (as defined)

b = the total number of hours the pharmacy (as defined) is ordinarily open for business

c = the number of equivalent full-time staff (EFTS).

Staff = Pharmacy Assistants (as defined)

'Pharmacist Manager' means a pharmacist who is employed to manage all aspects of a retail pharmacy practice.

- (a) A pharmacist manager is employed as the pharmacist in control of the business. Pharmacist managers are totally responsible to the proprietor for all aspects of the business.
- (b) A Pharmacist Manager (as defined) will be graded as follows:
 - (i) Grade 1 - in charge of or manages a small pharmacy (as defined) where the equivalent full-time staff (EFTS) is less than 2.
 - (ii) Grade 2 - in charge of or manages a large pharmacy (as defined) where the EFTS is 2 (or greater) but less than 4.
 - (iii) Grade 3 - in charge of or manages a large pharmacy (as defined) where the EFTS is 4 or more.
 - (iv) The number of Equivalent Full-Time Staff (EFTS) is calculated as follows: $a/b = c$

Where a = the total number of hours ordinarily worked by staff in the pharmacy (as defined)

b = the total number of hours the pharmacy (as defined) is ordinarily open for business

c = the number of equivalent full-time staff (EFTS).

Staff = Pharmacy Assistants (as defined)

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'Pharmacy' means premises that are registered by the Pharmacy Board of Tasmania.

'Trainee' means a person who has satisfied the examination requirements for the degree of Bachelor of Pharmacy, and who is engaging in the period of pre-registration experience required by the Act.

'Student' means a person who is undertaking a course of study leading to the degree of Bachelor of Pharmacy.

PHARMACY ASSISTANTS:

Pharmacy Assistant Grade 1 - Unqualified

An employee will be appointed to this grade if he or she:-

- has commenced employment in a pharmacy (as defined) for the first time; and
- is learning and acquiring, under supervision, the necessary competencies and relevant experience to allow progress to Pharmacy Assistant Grade 1 - Qualified (as defined).

A Pharmacy Assistant Grade 1 - Unqualified may be required to perform all of the duties performed by a Grade 1 Pharmacy Assistant - Qualified (as defined), to the level of the employee's training and experience.

Pharmacy Assistant Grade 1 - Qualified

- (a) An employee will be classified to this grade if he or she:
- possesses an accredited Pharmacy Assistant Grade 1 certificate
- (b) Competency Standards and Product Knowledge

The Units and Elements of Competency and product knowledge required are as follows:

- (i) Competency Standards (as defined):
- Units 2, 4 and 10
 - Elements 1.1, 1.2, 1.5 and 1.6
 - Elements 9.1, 9.2 and 9.3
 - Element 14.1

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(ii) Product Knowledge (as defined):

- overview of product knowledge; and
- a knowledge of Agency services

(c) Training

An employee at this level may undertake training to qualify for advancement to Pharmacy Assistant Grade 2 (as defined).

(d) Progression:

An employee shall remain at this Grade until qualified to work at Pharmacy Assistant Grade 2 (as defined).

Pharmacy Assistant Grade 2

(a) An employee will be classified to this grade if he or she:

- possesses an accredited Pharmacy Assistant Grade 2 certificate

(b) Competency Standards and Product Knowledge

The Units and Elements of Competency and product knowledge required are as follows:-

(i) Competency Standards (as defined):

Includes Grade 1 competency standards, plus:

- Units 5, 6
- Elements 1.3, 1.4
- Element 9.4
- Elements 14.2, 14.3

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(ii) Product Knowledge (as defined):

- Analgesics
- Baby/Infant Care
- Cosmetics
- Coughs and Colds
- Ear Care
- Eye Care
- Family Planning
- Feminine Hygiene
- Foot Care and Footwear
- Fragrances
- General Medicines
- Hair Care and Accessories
- Home Health Care
- Household Products and Confectionery
- Men's Toiletries and Grooming Aids
- Oral Care
- Photographics
- Skin Care, Soap and Bath and Deodorants
- Stomach and Laxatives
- Sun Care and Sunglasses
- Sports Medicine
- Veterinary and Pet Care
- Vitamins and Minerals (inc nutrition and diet)
- Wound Care and Surgical Sundries

(c) Training

An employee at this level may undertake training to qualify for advancement to Pharmacy Assistant Grade 3 (as defined).

(d) Progression:

An employee shall remain at this Grade until qualified to work at Pharmacy Assistant Grade 3 (as defined) and upon appointment to a Grade 3 position by the employer.

Pharmacy Assistant Grade 3

(a) An employee will be appointed to this grade if either:-

- (i) the employee is specifically engaged to operate a mini-lab photographic processing unit under general supervision; or
- (ii) is required, by the employer, to perform any one of the requirements in subclause (b) herein; and if he or she:-
 - possesses an accredited Pharmacy Assistant Grade 3 certificate

(b) Competency Standards and Product Knowledge

- (i) Assisting in the dispensary, includes Grade 1 and Grade 2 competency standards, plus:
 - Unit 15; or
- (ii) Mini-lab Operator
 - specialised knowledge and high proficiency in the operation of a mini-lab; or

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(iii) Information Systems Management:

specialised knowledge and high proficiency in computer operations, particularly pharmacy application programs; or

(iv) Sectional Management includes Grades 1 and 2 competency standards, plus:-

(A) Competency Standards:

- units 3, 7, 11

(B) Product Knowledge:

Advanced product knowledge in any one of the following groups 1 to 4:

1. Home Health Care, Nutrition and Diet (including vitamins and minerals), Sports Medicine and Wound Care;
2. Cosmetics, Fragrances, Skin Care and Hair Care;
3. Baby/Infant Care;
4. Photographics.

(c) A Pharmacy Assistant Grade 3 may be required to supervise Pharmacy Assistants, Grades 1 and 2.

(d) Training

An employee at this level may undertake training to qualify for advancement to Pharmacy Assistant Grade 4 (as defined).

(e) Progression:

An employee shall remain at this Grade until qualified to work at Pharmacy Assistant Grade 4 (as defined) and upon appointment to a Grade 4 position by the employer.

Pharmacy Assistant Grade 4

(a) An employee will be appointed to this grade if either:

- (i) the employee is specifically engaged to supervise the operations of a mini-lab photographic processing unit; or
- (ii) is required, by the employer, to perform any one of the requirements in subclause (b) herein; and if he or she:
 - possesses an accredited Pharmacy Assistant Grade 4 certificate

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(b) Competency Standards

(i) Dispensing, includes Grades 1, 2 and 3 competency standards, plus competence demonstrated by completion of a recognised dispensing course.

(ii) Marketing, includes Grades 1, 2 and 3 competency standards, plus:

Competency Standards Unit 8

(iii) Operations Supervision, includes Grades 1, 2 and 3 competency standards, plus:

Competency Standards Units 12 and 13

(c) A Pharmacy Assistant, Grade 4 may be required to supervise Pharmacy Assistants, Grades 1, 2 and 3.

4. HIGHER DUTIES

(a) Pharmacy Assistants

An employee engaged for a period in excess of 4 hours on any one day on duties carrying a higher rate of pay than the employee's ordinary classification shall be paid the higher rate for such day. If engaged for less than 4 hours in the higher classification the employee shall be paid the higher rate for the actual time so worked.

(b) Pharmacists

Where a pharmacist (as defined) is required, at the direct request of the owner or manager, to be in charge of a shop for a period in excess of two continuous hours in any one day, the pharmacist shall be paid at the rate for the relevant category of pharmacist-in-charge (as defined) for the period of time so worked.

5. PHARMACISTS REMUNERATION PACKAGING

An employee engaged as a pharmacist may agree on a rate of pay other than that specified for the appropriate classification in Part III – Wages and Related Matters, Clause 1 - Wage Rates, on the understanding that such rate of pay contains an element compensating in whole or in part for entitlements which would otherwise accrue under Part II – Employment Relationship And Associated Matters, Clause 2 - Employment Categories, Part V – Hours Of Work, Penalty Payments And Overtime, Clause 3 - Penalty Payments and Part V – Hours Of Work, Penalty Payments And Overtime, Clause 2 - Overtime.

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6. PAYMENT OF WAGES

- (a) Full-time and part-time employees shall be paid on a weekly, fortnightly or monthly basis according to the contract of employment or as otherwise agreed on any day of the week except Saturday or Sunday, provided that payment is made on an employee's ordinary working day.
- (b) Casual employees shall be paid at the end of each separate engagement provided that, where the employer and the employee agree, payment may be made either weekly, fortnightly or monthly.
- (c) Wages shall be paid by one of the following methods:
 - cash (in employer's time);
 - cheque; or
 - electronic funds transfer.

PROVIDED that where the method of payment is by electronic funds transfer it shall be at no cost to the employee.
- (d) On each pay day an employee shall be issued with a statement setting out the pay period for which the statement is issued, the amount of wages to which the employee is entitled, the amount of deductions made therefrom and the net amount being paid.

7. OCCUPATIONAL SUPERANNUATION

- (a) Definition
 - 'Fund'** means a Superannuation Fund as defined in the *Occupational Superannuation Standards Act 1987*.
- (b) An employer shall make a superannuation contribution on behalf of all eligible employees at a rate consistent with the requirements of the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Occupational Superannuation Standards Act 1987* into a fund (as defined).
- (c) The employer shall not be required to make contributions into more than one fund (as defined).
- (d) The employer shall consult as may be necessary to facilitate the selection by a majority of employees of an appropriate fund within the meaning of subclause (a) herein.

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- (e) Notwithstanding the provisions of this clause, an employer shall continue to make contributions into the fund applying as at the date of the making of this award until such time as an alternate fund is selected in accordance with subclause (d) of this clause.
- (f) Additional Employee Contributions
 - (i) An employee may make contributions to the fund in addition to those made by the employer.
 - (ii) An employee who wishes to make additional contributions must authorise the employer in writing to pay into the fund, from the employee's wages, a specified amount in accordance with the fund trust deed and rules.
 - (iii) An employer who receives written authorisation from the employee, must commence making payments into the fund on behalf of the employee, in accordance with subclause (g) within fourteen days of receipt of the authorisation.
 - (iv) An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions, in accordance with subclause (g), within fourteen days of receipt of the authorisation.
- (g) Frequency of Payment

Employer and employee contributions shall be paid to the fund monthly.
- (h) Statement of Contributions

The employer will provide, at the employee's request, a statement of the contribution paid on the employee's behalf to the fund for the previous financial year. This statement will be provided as early as possible after the end of the financial year but need not be provided if the employee's pay slips contain the relevant information.

8. COMPETENCY STANDARDS

The skill related career paths for pharmacy assistants detailed in Part III – Wages And Related Matters, Clause 3- Classification Descriptors, are based on the Units and Elements of Competence detailed in the National Competency Standards for Pharmacy Assistants endorsed by the National Training Board in November 1993.

The parties to the award agree that the following procedure will be observed should any variation to the National Competency Standards occur:-

- (a) the parties will initially meet to review the competency-based career paths and associated wage rates in light of the variation/s made; and

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- (b) refer the matter to the Tasmanian Industrial Commission should any variation to the award be necessary.

Any dispute arising out of this clause shall be dealt with in accordance with the provisions of Part VII – Consultation And Dispute Resolution, Clause 1- Settlement of Disputes.

9. TRAINING

- (a) Training courses consistent with the competency-based classification structure for Pharmacy Assistants contained in Part III – Wages And Related Matters, Clause 3 – Classification Descriptors will be available to all pharmacy assistants employed under this award.
- (b) Where the employer requires an employee to undertake training in accordance with this clause, the following conditions will apply:
 - (i) the employer shall meet the costs of the relevant training course; and
 - (ii) the employee shall not experience a reduction in ordinary pay as a consequence of being required to undertake on-the-job training.
- (c) Where the employee elects to undertake training in accordance with this clause, the employee shall meet the costs of the relevant training course.

10. MINIMUM WAGE

- (a) Minimum Wage

No employee shall be paid less than the minimum wage.
- (b) Amount of Adult Minimum Wage
 - (i) The minimum wage for full-time adult employees not covered by Part III – Wages and Related Matters, Clause 2 - Supported Wage System is \$467.40 per week.
 - (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).
 - (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

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(c) How the Minimum Wage Applies to Juniors

- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.
- (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T.11548 of 2004) and all previous safety net and state wage case adjustments.

PART IV - ALLOWANCES

1. CLOTHING AND CLOTHING ALLOWANCE

- (a) An employer may require an employee to wear outer clothing or protective clothing of a distinctive colour or style.
- (b) Where the employer supplies the clothing mentioned in subclause (a) of this clause, the employee shall be responsible for the laundering of these items at no cost to the employer.
- (c) Where the employee purchases the clothing mentioned in subclause (a) of this clause, the employer shall be responsible for the laundering of these items or, alternatively, pay to the employee a laundering allowance of \$3.00 per week.

PROVIDED that this subclause shall not apply to casual or part-time pharmacists.

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2. EXPENSES AND ACCOMMODATION

- (a) In addition to the remuneration payable under Part III – Wages And Related Matters, Clause 1- Wage Rates of this award the employer shall make suitable arrangements to cover all reasonable expenses incurred by an employee required to travel in the course of his or her employment. Accommodation provided by an employer should be of an acceptable standard and suitable arrangements made for all meals whilst travelling on the employer's business.
- (b) Arrangements established by an employer shall be discussed with the employee prior to the incurring of any expense.
- (c) An employee required to use his or her own car on any day shall be paid not less than:
- | | |
|--------------------|---------------------------|
| 2 litres and above | 39.7 cents per kilometre |
| Less than 2 litres | 34.15 cents per kilometre |

PROVIDED that this rate shall be adjusted, on application, on 1 September each year in accordance with movement in the "Transportation" component (Weighted Average Of Eight Capital Cities) of the Consumer Price Index for the 12 months preceding the June Quarter in the same year.

3. MEAL BREAKS, REST PERIODS AND MEAL ALLOWANCES

- (a) Meal Break
- (i) An employee engaged to work at least six consecutive hours in any one day, Monday to Sunday, shall be allowed an unpaid meal break of 30 minutes. The meal break shall be taken after not less than 3 hours nor more than 5 hours after the commencement of duty.
- (ii) Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than 5 hours in any one day, Monday to Friday, without a break of not less than 30 minutes for a meal.
- (iii) In circumstances where a second meal break is required on any one day such break shall not be less than 30 minutes.
- (b) Meal Allowance
- (i) An employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid \$12.70 meal money.

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PROVIDED that this provision shall not apply in circumstances where the employer has advised the employee of the requirement to work overtime on the previous day.

- (ii) The payment prescribed in paragraph (i) herein shall be made on the day on which the overtime is worked, prior to the meal break being taken, or by agreement of the employer and employee on the occasion of the next payment of wages.

(c) Rest Period

Employees shall be allowed a rest period to be taken approximately midway between:-

- (i) the start of work and the midday meal break; and
- (ii) between the resumption of work after the midday meal break and the cessation of work for the day.

Each rest period shall be of 10 minutes duration and taken at a time as agreed between the employer and the employee.

4. MEAL BREAK AVAILABILITY ALLOWANCE

A meal break availability allowance calculated at 25% of the ordinary hourly rate for a full-time Pharmacist-in-Charge Grade 1 will be payable to a Pharmacist (as defined) who works for more than 6 hours continuously on any day, excluding time for closing.

The allowance shall be in addition to the appropriate ordinary hourly rate prescribed in Part III – Wages And Related Matters, Clause 1- Wage Rates.

PART V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME

1. HOURS OF WORK

- (a) The ordinary hours of work for full-time employees shall be an average of 38 per week worked over a four week cycle, to be worked between 6.00 am and midnight, Monday to Sunday inclusive, subject to:
 - (i) a maximum of 12 hours in any one day;
 - (ii) not more than 20 days in any 28 day period;
 - (iii) not more than 6 days continuously
 - (iv) Not more than 2 consecutive days in excess of 10 hours without the express consent of the employee.

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PROVIDED that where employees are engaged for periods of less than four weeks, the ordinary hours of work shall be an average of 38 per week to be worked over the number of weeks the employee is engaged.

(b) Rosters

(i) Pharmacy Assistants

- (1) Each employer shall display a roster showing the days and hours required for each employee. The roster shall include the start and finish times of each employee bound by the award and may only be varied by agreement or, failing agreement, by the giving of not less than 1 week's notice by the employer.
- (2) Where full time and part-time pharmacy assistants (other than those part-time employees in receipt of the 20% loading provided for in Part II - Employment Relationship And Associated Matters, Clause 2- Employment Categories, subclause (c) Part-time employees are being rostered to work on Sundays they will be rostered off duty for at least one Sunday in each 2 weeks.

(ii) Pharmacists

The rostered ordinary hours of engagement for a pharmacist shall be established at engagement and may be varied by agreement between the employer and employee.

In the event no agreement can be reached the roster may be varied by the employer giving not less than the same period of notice required by Part II - Employment Relationship And Associated Matters, Clause 3 - Termination of the intended change.

(iii) General

- (1) There will be a minimum break of 10 hours between an employee's finishing time on one shift (including overtime) and commencing time on the next shift.
- (2) An employee's roster may not be changed with the intent of avoiding payment for public holidays. Should such circumstances arise the employee shall be entitled to payment for the public holiday as if their roster had not changed.
- (3) Where an employee's rostered ordinary hours of work fall on any of the holidays with pay mentioned in Part VI - Leave And Holidays With Pay, Clause 4 - Holidays with Pay, the employee shall work those hours if required to do so by the employer.

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(c) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at later time, during the spread of ordinary hour provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993
- (v) An employer shall record make up time arrangements in the time and wages book.

(d) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off (RDO) to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.

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- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set on in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record RDO arrangements in the time and wages book.

2. OVERTIME

- (a) Overtime shall be paid at the rate of time and a half for the first three hours and double time thereafter, except for Sundays and Holidays with Pay, when it shall be paid at double time for all time worked.
- (b) Where an employer and an employee agree, time off at the penalty equivalent may be taken in lieu of overtime payments; provided that such time off is taken within 28 days, or is accumulated and added to the period of annual leave.
- (c) An employee who works past the close of business, in fact to close the pharmacy (as defined) without customers, shall be paid at the same rate at the time fixed for ceasing work for fifteen minute intervals up to a maximum of 30 minutes at that rate. Thereafter normal overtime provisions shall apply, notwithstanding provisions (a) and (b) hereof.
- (d) Time Off In Lieu of Payment

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked (unless otherwise provided elsewhere in the award)
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in sub-clause (a) of this clause, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

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- (vi) An employer shall record time off in lieu arrangements in the time and wages book.

3. PENALTY PAYMENTS

- (a) In addition to the appropriate ordinary hourly rate for an employee the following penalty loadings shall be paid where ordinary time is worked in the following spans of hours:

- (i) On Monday to Friday inclusive:

- (A) between 6.00 am and 8.00 am 25%

- (B) between 9.00 pm to midnight 25%

- (ii) On Saturday

- Between 6.00 am and midnight 25%

- (iii) On Sunday - 50% with a minimum payment as for three hours worked.

- (iv) On a holiday with pay - 50% of the relevant hourly classification rate.

PROVIDED that to ensure no Pharmacy Assistant's actual hourly rate is decreased, existing hourly rates will be preserved until such time as they equate to 50% of the relevant hourly classification rate specified by the award.

- (b) The penalty payments prescribed by this clause shall not be cumulative on overtime rates.

- (c) Where an employer and an employee mutually agree, time off at the penalty equivalent may be taken in lieu of penalty payments; provided that such time off is taken within 28 days, or is accumulated and added to the period of annual leave.

- (d) Casual Pharmacists

The result of the minimum rates adjustment for pharmacists shall not see a reduction in rates from current \$ values paid based on a Relieving Pharmacist Grade 2 (Order No. 3 of 1991 - Consolidated of the Chemists Award) on Monday to Friday 6.00 am - 9.00 pm and on Saturday. Until overtaken by the application of this award, the minimum rates to be paid for work performed under this clause shall be:

- (i) Monday to Friday 6.00 pm - 9.00 pm

- \$22.89 per hour until this amount is exceeded by the ordinary hourly rate for a Pharmacist-in-Charge Grade 1.

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(ii) Saturday:

in excess of three hours - \$30.52 per hour until this amount is exceeded by 125% of the ordinary hourly rate for a Pharmacist-in-Charge Grade 1.

4. REQUIREMENT TO WORK REASONABLE OVERTIME

- (a) Subject to subclause (b) an employer may require an employee to work reasonable overtime at overtime rates or with time off in lieu in accordance with Part V - Hours Of Work, Penalty Payments And Overtime, Clause 2 - Overtime, subclause (e).
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
- (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (v) any other relevant matter.

PART VI - LEAVE AND HOLIDAYS WITH PAY

1. ANNUAL LEAVE

(a) An employee [other than one engaged as a casual (as defined) or a part-time employee (as defined) in receipt of the 20% loading as prescribed in Part II - Employment Relationship And Associated Matters, Clause 2 - Employment Categories, subclause (c) Part-time employees)] shall be allowed a period of one hundred and fifty two hours paid annual leave after each 12 months' continuous service.

(b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one continuous period, or if the employer and the employee agree, in one of the following methods:

- (i) in two separate periods, the lesser of which shall be not less than 7 consecutive days, i.e. 5 working days;

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(ii) in any combination, provided one period shall be not less than 7 consecutive days, i.e. 5 working days.

(c) Annual Leave Exclusive of Holidays With Pay

If any of the holidays prescribed by Part VI – Leave And Holidays With Pay, Clause 4- Holidays with Pay hereof fall within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

Except as provided in subclause (h) hereof, payment shall not be made or accepted in lieu of annual leave.

(e) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(f) Payment for Period of Leave

(i) Before going on annual leave, an employee shall be paid the amount of wages he or she would have received had the employee been at work during the period of annual leave. The amount shall be based on the employee's projected roster of ordinary hours for this period.

(ii) In addition to the amount mentioned in paragraph (i) of this subclause all employees, other than one engaged as a casual (as defined) or a part-time employee (as defined) in receipt of the 20% loading prescribed in Part II – Employment Relationship And Associated Matters, Clause 2- Employment Categories, subclause (c) Part-time employees, shall receive a loading of 17.5% on payments made for annual leave as prescribed in paragraph (i) hereof.

(g) Leave Allowed before Due Date

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

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Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Part VI – Leave And Holidays With Pay, Clause 4- Holidays With Pay hereof.

(h) Proportionate Leave on Termination of Service

- (i) If after one months continuous service in any qualifying 12 monthly period an employee lawfully leaves his or her employment, or the employee's employment is terminated by the employer through no fault of the employee, the employee shall be paid at his or her ordinary rate of wage as follows:

12.67 hours for each completed month of continuous service.

The service being in respect of leave which has not been granted.

- (ii) The 17.5% leave loading prescribed in subclause (f)(ii) of this clause shall not apply to proportionate leave on termination of service.

(iii) Calculation of Continuous Service

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

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

(i) Flexibility

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.

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- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

2. BEREAVEMENT LEAVE

All employees (other than casual employees) 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 3 ordinary days provided that no payment shall be made in respect of an employee's rostered days off.

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

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

3. 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 Part VI – Leave And Holidays With Pay, Clause 6 - 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.

Leave may be taken for part of a single day.

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For the purposes of this clause part-time employees 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

- (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
 - (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.

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(c) Grievance Process

The dispute settlement clause of the award applies to a dispute about the effect or operation of this clause.

4. HOLIDAYS WITH PAY

(a) Definition

'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 (as defined), is agreed on by the employee and the employer.

- (b) All employees (other than casual employees (as defined) or part-time employees (as defined) in receipt of the 20% loading prescribed in Part II – Employment Relationship And Associated Matters, Clause 2 - Employment Categories, subclause (c) Part-time employees) shall be allowed the following days as paid holidays:

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

PROVIDED that a pharmacy assistant may be required to attend for duty for one hour between 7.00 pm and 8.00pm on any holiday.

- (c) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, the employee had been at work.
- (d) Subject to subclause (d) of this clause, payment to an employee for work performed on any of the holidays with pay mentioned in subclause (a) shall be at the rates prescribed in Part V – Hours Of Work, Penalty Payments And Overtime, Clause 3 - Penalty Payments of this award.
- (e) Where the employer and employee agree, an alternate day may be substituted for any of the holidays with pay prescribed in subclause (a) of this clause. In these circumstances payment for work performed on the substituted holiday with pay will be at the ordinary time rate.

5. 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.

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(a) Definitions

(i) For the purposes of this clause:

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

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

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

'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.

'Former position' means the position held by a male or female employee immediately before proceeding on leave or part-time employment under this clause 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/she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

'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.

'Maternity leave' means leave of the type provided for in subclause (b) - Maternity Leave (and includes special maternity leave).

'Paternity leave' means leave of the type provided for in subclause (c) - Paternity Leave.

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

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

(ii) For the purposes of subclauses (b) and (c):

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

(iii) For the purposes of subclause (d):

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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 is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(b) Maternity Leave

(i) Nature of Leave

Maternity leave is unpaid leave.

(ii) Eligibility for Maternity Leave

- (1) An employee who becomes pregnant, upon production to her employer of the certificate required by paragraph (iii) 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.
- (2) Subject to paragraphs (v) and (viii) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (3) 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.

(iii) Certification

At the time specified in paragraph (iv) hereof the employee must produce to her employer:

- (1) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (2) 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.

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(iv) Notice Requirements

- (1) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subparagraph (iii)(1).
- (2) 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 subparagraph (iii)(2).
- (3) 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.
- (4) 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 subparagraph (2) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(v) 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 paragraphs (ix), (x), (xi) and (xii) hereof.

(vi) Variation of Period of Maternity Leave

- (1) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (ii) hereof:
 - (A) 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;
 - (B) the period may be further lengthened by agreement between the employer and the employee.

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- (2) 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.

(vii) Cancellation of Maternity Leave

- (1) 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.
- (2) 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 four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(viii) Special Maternity Leave and Sick Leave

- (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (A) 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
 - (B) 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.
- (2) 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 paragraph (ii) hereof.
- (3) For the purposes of paragraphs (ix), (x) and (xi) hereof, maternity leave shall include special maternity leave.
- (4) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph 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 paragraph (v) hereof, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions

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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.

(ix) Maternity Leave and Other Leave Entitlements

- (1) Provided the aggregate of any leave including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) 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.
- (2) 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.

(x) Effect of Maternity Leave on Employment

Subject to this subclause, 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.

(xi) Termination of Employment

- (1) 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.
- (2) 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.

(xii) Return to Work After Maternity Leave

- (1) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (2) An employee, upon returning to work after maternity leave or the expiration of the notice required by subparagraph (1) 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 paragraph (v) 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.

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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.

(xiii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (2) 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.
- (3) 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 subclause, 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.
- (4) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(c) Paternity Leave

(i) Nature of Leave

Paternity leave is unpaid leave.

(ii) Eligibility for Paternity Leave

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

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

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

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(iii) Certification

At the time specified in paragraph (iv) the employee must produce to his employer:

- (1) 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;
- (2) in relation to any period to be taken under subparagraph (ii)(2) hereof, a statutory declaration stating:
 - (A) he will take that period of paternity leave to become the primary care-giver of the child;
 - (B) particulars of any period of maternity leave sought or taken by his spouse; and
 - (C) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(iv) Notice Requirements

- (1) The employee shall, not less than 10 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 paragraph (iii) hereof.
- (2) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in subparagraph (1) hereof if such failure is due to:
 - (A) the birth occurring earlier than the expected date; or
 - (B) the death of the mother or the child; or
 - (C) other compelling circumstances.
- (3) The employee shall immediately notify his employer of any change in the information provided pursuant to paragraph (iii) hereof.

(v) Variation of Period of Paternity Leave

- (1) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (ii) hereof:

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- (A) the period of paternity leave provided by subparagraph (ii)(2) 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;
 - (B) the period may be further lengthened by agreement between the employer and the employee.
- (2) The period of paternity leave taken under subparagraph (ii)(2) 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.

(vi) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (ii)(2) 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.

(vii) Paternity Leave and Other Leave Entitlements

- (1) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) 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.
- (2) 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.

(viii) Effect of Paternity Leave on Employment

Subject to this subclause, 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.

(ix) Termination of Employment

- (1) 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.
- (2) 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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(x) Return to Work after Paternity Leave

- (1) 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 subparagraph (ii)(2) hereof.
- (2) An employee, upon returning to work after paternity leave or the expiration of the notice required by subparagraph (1) 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.

(xi) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (2) 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.
- (3) 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 subclause, 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.
- (4) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(d) Adoption Leave

(i) Nature of Leave

Adoption leave is unpaid leave.

(ii) Eligibility

An employee, upon production to the employer of the documentation required by paragraph (iii) 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:

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- (1) an unbroken period of up to three weeks at the time of the placement of the child;
- (2) 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:
 - (A) any period of leave taken pursuant to subparagraph (1) hereof; and
 - (B) 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.

(iii) Certification

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

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

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(iv) Notice Requirements

- (1) 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.
- (2) 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.
- (3) 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 subparagraph (ii)(1) hereof.
- (4) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under subparagraph (ii)(2) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (5) An employee shall not be in breach of this subclause as a consequence of failure to give the stipulated period of notice in accordance with subparagraphs (3) and (4) 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.

(v) Variation of Period of Adoption Leave

- (1) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (ii) hereof:
 - (A) the period of leave taken under subparagraph (ii)(2) 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;
 - (B) the period may be further lengthened by agreement between the employer and employee.

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- (2) The period of adoption leave taken under subparagraph (ii)(2) 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.

(vi) Cancellation of Adoption Leave

- (1) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (2) 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.

(vii) 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.

(viii) Adoption Leave and Other Entitlements

- (1) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (ii) 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.
- (2) 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.

(ix) Effect of Adoption Leave on Employment

Subject to this subclause, 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.

(x) Termination of Employment

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

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- (2) 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.

(xi) Return to Work After Adoption Leave

- (1) 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 subparagraph (ii)(2) hereof.
- (2) 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 subclause 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.

(xii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (2) 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.
- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, 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.
- (4) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) Part time work

(i) Entitlement

With the agreement of the employer:

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- (1) 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.
 - (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
 - (3) 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.
 - (4) 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.
- (ii) Return to Former Position
- (1) 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.
 - (2) Nothing in subparagraph (1) 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.
- (iii) 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.
- (iv) Pro Rata Entitlements
- Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (vii) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.
- (v) Transitional Arrangements - Annual Leave
- (1) An employee working part-time under this subclause 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 subclause.

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

(vi) Transitional Arrangements - Sick Leave

An employee working part-time under this subclause 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.

(vii) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (C) upon the classification applying to the work to be performed; and
 - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

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(viii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(ix) Extension of Hours of Work

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

(x) 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.

(xi) Inconsistent Award Provisions

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

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

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

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(xii) Replacement Employees

- (1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- (2) A replacement employee may be employed part-time. Subject to this paragraph, paragraphs (iv), (v), (vi), (vii), (viii) and (xi) of this subclause apply to the part-time employment of replacement employees.
- (3) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (4) Unbroken service as a replacement employee shall be treated as continuous service.
- (5) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

6. SICK LEAVE

- (a) An employee [other than one engaged as a casual employee (as defined), or a part-time employee in receipt of the 20% loading as prescribed in Part II – Employment Relationship And Associated Matters, Clause 2 - Employment Categories, subclause (c) Part-time employees], who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) the employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation;
 - (ii) the employee 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 or her 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;
 - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he or she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) the employee shall not be entitled in any year to sick leave in excess of seventy-six hours of ordinary working time.

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PROVIDED that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

- (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 or her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

PART VII - CONSULTATION AND DISPUTE RESOLUTION

1. SETTLEMENT OF DISPUTES

Subject to the *Industrial Relations Act 1984* (as amended) any matter in dispute shall be the subject of negotiations and settlement in the following manner:

Any matter of concern shall in the first instance be discussed between the employer and the employee.

- (a) The matter shall be taken up by an accredited union delegate or union organiser with the employer concerned or by the employer concerned with the accredited union delegate or union organiser, as the case may be.
- (b) If the matter in dispute is not settled at the preceding stage, it may be referred by either the Branch Secretary (or the Branch Secretary's nominee) or the employer to the Tasmanian Industrial Commission for settlement.
- (c) The decision of the Tasmanian Industrial Commission shall be accepted by the parties as final subject to the exhaustion of any statutory appeal rights.
- (d) Where any of the provisions of this clause have been invoked by any party, work will continue without limitation.
- (e) Where a bona fide safety issue is involved, the parties shall give immediate priority to resolving the issue. In resolving the issue, the parties shall have regard to recognised safety standards and any relevant legislation.

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2. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase efficiency and productivity and to enhance the opportunities and job security of employees.
- (b) At each place of employment a consultative mechanism appropriate to the size, structure and needs of that place shall be established to consider efficiency measures. The consultative mechanism shall involve management, employees of the centre and the union(s) relevant.
- (c) Efficiency measures which may seek to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.
- (d) An appropriate classification structure shall be an issue for on-going consultation between the parties to the award.

PC Shelley
DEPUTY PRESIDENT

20 August 2004