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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T12940 of 2007)
Private Sector Awards
Public Sector Awards

FULL BENCH:
PRESIDENT P L LEARY
DEPUTY PRESIDENT P C SHELLEY
COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by $22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to $14.10 - State Minimum Wage rate determined at $527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

MONUMENTAL MASONS AWARD

ORDER

No. 1 of 2007
(Consolidated)

AMEND THE **MONUMENTAL MASONS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Monumental Masons Award".

2. SCOPE

This award is established in respect of the trade of monumental mason and/or general stonemason.

3. ARRANGEMENT

SUBJECT MATTER	CLAUSE NO.
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Allowances	9
Annual Leave	10
Bereavement Leave	11
Holidays With Pay	12
Hours	13
Inclement Weather	14
Long Service Leave	15
Meal Allowance	16
Mixed Functions	17
Overtime	18
Parental Leave	19
Personal Leave	20
Presenting for Work and Not Required	21
Rest Periods	22
Right of Entry	23
Saving	24
Service Increments	25
Special Rates and Protective Clothing	26
Sunday and Holiday Work	27
Termination of Service	28
Travelling Time	29

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2007.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Monumental Masons Award No. 2 of 2006 (Consolidated) and No. 3 of 2006.

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

6. PARTIES AND PERSONS BOUND

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

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

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

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

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

  (ii) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope.

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

  the Tasmanian Chamber of Commerce and Industry Limited.

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7. DEFINITIONS

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

8. WAGE RATES

1. WAGE RATES

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

	Base Rate $	Safety Net Adjustment $	Weekly Wage Rate $
Monumental Masons	355.60	201.70	557.30
All other employees (irrespective of age)	325.40	201.70	527.10

2. FOREMAN AND LEADING HANDS

A person specifically appointed to be a foreman or a leading hand shall be paid at the rate of the undermentioned additional amounts above the weekly wage rate of the highest classification supervised, or his own weekly wage rate, whichever is the highest, in accordance with the number of persons in his charge:

		Amount Per Week $
(a)	in charge of not more than 1 person	13.10
(b)	in charge of 2 and not more than 5 persons	28.40
(c)	in charge of 6 and not more than 10 persons	35.90
(d)	in charge of more than 10 persons	48.00

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3. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by subclause 6 Supported Wage System is $527.10 per week.

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

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

(c) How the Minimum Wage Applies to Juniors

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

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

(d) Application of Minimum Wage to Certain Employees

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

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(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(i) applies to all work in ordinary hours;

(ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal 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 2007 State Wage Case Decision (T12940 of 2007) and all previous safety net and state wage case adjustments.

4. APPRENTICES

The minimum weekly wage rate to be paid to apprentices shall be the undermentioned percentages of the weekly wage rate prescribed for Monumental Masons in subclause 1 - Wage Rates of this clause adjusted to the nearest ten cents.

	Percentage %
First year	38
Second year	55
Third year	75
Fourth year	90

5. HOURLY RATE

To an employee engaged by the hour on hourly rate (calculated to four decimal places of a dollar) equivalent to one fortieth of fifty two over forty six point eight of the weekly wage rate which would be payable in pursuance of subclause 1 - Wage Rates and subclause 2 - Foreman and Leading Hands of this clause and Clause 9 - Allowances, subclause (c) - Disability Allowance of this award, had the employee been engaged by the week.

PROVIDED that a casual employee shall be paid an additional $33\frac{1}{3}$ per cent loading on the hourly rate prescribed for the classification.

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6. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

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

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

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

(b) For the purposes of this subclause:

'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.

'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.

'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.

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

(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:

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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.

(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.

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(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 four weeks) may be needed.

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

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

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

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

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9. ALLOWANCES

(a) Tool Allowance

In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates of this award and subclause (c) - Disability Allowance of this clause, employees shall be paid a tool allowance per week in accordance with the following:

Carver	$11.90
Letter Cutter	$11.90
Stonemason	$11.90

When all tools are supplied by the employer this clause does not apply.

(b) Allowance for Distant Jobs

(i) For the purposes of this subclause, 'a distant job' is one in respect of which the distance or the travelling facilities available to and from makes it reasonably necessary that the employee shall live and sleep at some other place than his usual place of residence.

(ii) For an employee engaged on work on a distant job as defined in paragraph (i) above, the employer shall provide suitable board and accommodation, and if such is not provided by the employer he shall pay to the employee an allowance to enable him to provide himself with suitable board and accommodation at the following rates:

if employed on the job for less than a full working week $25.00 per day;

if employed on the job for a full working week or longer, at the rate of $174.70 per week (of seven days).

(c) Disability Allowance

(i) In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates and subclause 4 - Apprentices of this award, all employees engaged on construction work on site shall be paid an allowance of $20.80 per week to compensate for the following disabilities of the industry, namely being subjected to:

(1) climatic conditions when working in the open on all types of work or on multi-storey buildings prior to it being enclosed;

(2) the physical disadvantage of having to climb stairs or ladders, particularly on multi-storey buildings prior to an elevator being available;

(3) dust blowing in the wind on building sites;

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(4) sloppy and muddy conditions associated with the initial stages of erection of a building;

(5) dirty conditions caused by the use of form oil or from green timber;

(6) drippings from newly poured concrete;

(7) the disability of working on all types of scaffold, other than a single plank or a bosun's chair; and

(8) the lack of usual amenities associated with factory work (e.g. meal rooms, change rooms, lockers, etc.)

(ii) In addition to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wage Rates and subclause 4 - Apprentices of this award, all employees engaged on maintenance work shall be paid an allowance of $10.20 per week to compensate for disabilities of the industry not otherwise provided for in this award.

(iii) **'Construction work'** means work in connection with the erection, repair, maintenance, renovation, ornamentation, or demolition of buildings or structures, and the making, preparing, assembling or fitting in connection therewith or the making, preparing, assembling, and the fixing of any material necessitating the use of tools or machines.

10. ANNUAL LEAVE

(a) Period of Leave

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

(b) Annual Leave Exclusive of Public Holidays

(i) Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 12 - Holidays with Pay of this award and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to the period of annual leave, time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.

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

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(c) Calculation of Continuous Service

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

(i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

(ii) any absence from work on account of personal sickness, accident or on account of leave lawfully granted by the employer; or

(iii) any absence with reasonable cause, proof whereof shall be upon the employee.

In cases of personal sickness or accident or absence with reasonable cause, the employee to become entitled to the benefit of this subclause shall inform the employer, if practicable, within 24 hours of the commencement of such absence of his inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of his absence.

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

(d) Proportionate Leave on Termination of Service

If after 40 hours' continuous service excluding overtime in any qualifying 12 monthly period an employee leaves his employment or his employment is terminated by the employer, the employee shall be paid pro-rata for the leave for which he has qualified on the basis of:

four forty-eighths of a week's wage in respect of each 40 hours for which leave has not been granted.

(e) Payment in Lieu Prohibited

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

(f) Broken Leave

The annual leave shall be given and taken in a continuous period, or if the employee and the employer so agree, in two separate periods and not otherwise.

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(g) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees entitled to paid annual leave shall receive a loading of 17½ percent on the payment made for annual leave

(h) Calculation of Service

Where the employer is a successor or assignee or transmittee of business if an employee in the employment of the employer's predecessors at the time when he became such successor or assignee or transmittee the employee in respect of the period during which he was in the service of the predecessor, shall for the purpose of this clause, be deemed to be in the service of the employer.

(i) Disputes

Any dispute as to the rights of an employee to or with respect to annual leave shall be dealt with by the Secretary for Labour.

11. BEREAVEMENT LEAVE

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

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided 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.

(b) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

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(c) Casual Employees

(i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

(ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

(iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

12. HOLIDAYS WITH PAY

(a) All employees engaged by the week 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, Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

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

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

13. HOURS

The ordinary hours of employment shall be 40 per week, to be worked in five days of eight hours each (exclusive of meal periods) between the hours of 8.00am and 5.00pm, Monday to Friday inclusive.

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14. INCLEMENT WEATHER

When an employer and an employee engaged on fixing work in a cemetery agree that such work cannot be carried out owing to wet weather, the employer shall provide the employee with other work. In the event of the employer failing to do so he shall pay the employee for the time so lost.

15. LONG SERVICE LEAVE

TASBUILD

Eligible employers will be registered with TasBuild and will comply with its obligations under the *Construction Industry (Long Service) Act 1997.*

For the purpose of this clause eligible employees will be in accordance with the *Construction Industry (Long Service) Act 1997* (as amended from time to time) or as determined by the TasBuild Board in accordance with its rules (as amended from time to time).

16. MEAL ALLOWANCE

(a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he will be required to work shall either be supplied with a meal by the employer or be paid the amount of $14.10 provided that employees living in the same locality as their work place who can reasonably return home for meals shall not be entitled to the benefit of this clause.

(b) If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the time advised, he shall be paid the amount prescribed in subclause (a) of this clause for a meal which he has provided but which is surplus.

(c) An employee required to work during his meal hour shall be paid at the rate of time and a half until he is allowed the usual period of time for a meal break.

Provided that an employer may be permitted to advance an employee's meal break so that it will conclude not later than 1.30pm. In these circumstances the penalty rate prescribed in this subclause shall not apply.

17. MIXED FUNCTIONS

Any employee who is engaged for half or more than half of one day on duties carrying a higher rate than his usual classification shall be paid the higher rate for the whole of such day. If employed on such work for less than half of one day he shall be paid at the higher rate for the time so worked.

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18. OVERTIME

For all time of duty before the time fixed for commencing work or after the time fixed for ceasing work, or on a Saturday, payment shall be made at the rate of time and a half for the first two hours and double time thereafter.

19. 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.

(a) Definitions

For the purposes of this clause:

(i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.

(ii) **'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.

(iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.

(iv) **'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.

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

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

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(vii) **'Spouse'** includes a de facto or a former spouse.

(b) Entitlement

(i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.

(ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

(1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

(2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

(i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

(1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;

(2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.

(ii) Where the employee gives notice under (d) (i) the employee must also provide 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.

(iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.

(iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

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(v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(vi) Special Maternity 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 the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

(2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.

(3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

(1) Where an employee is pregnant and, 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 will, 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.

(2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

(i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:

(1) that 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 on which the birth took place, and

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(2) written notification of the proposed dates on which the period of paternity leave will start and finish and

(3) a statutory declaration stating:

(A) that period of paternity leave will be taken to become the primary care-giver of a child;

(B) particulars of any period of maternity leave sought or taken by the mother, and

(C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.

(4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

(i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

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

(2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and

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

(iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

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(v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.

(vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

(1) An 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.

(ii) 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.

(iii) Pro Rata Entitlements

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

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(iv) Transitional Arrangements - Annual Leave

(1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.

(2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, 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.

(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal 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.

(vi) 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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(vii) 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.

(viii) 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 (vi).

(ix) 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.

(x) 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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(h) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.

(ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.

(iii) 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. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.

(iv) Unbroken service as a replacement employee shall be treated as continuous service.

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

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless other wise agreed between employee and employer, and consistent with the provisions of this clause:

(i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.

(ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c) (vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

(iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.

(iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

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(j) Redundancy

(i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.

(ii) 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 will be entitled to a position as nearly comparable in status and pay to that of their former position.

(k) Right To Request Variation To Parental Leave Provision

(i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

(1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;

(2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;

(3) to return from a period of parental leave on a part-time basis until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.

(ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

(i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

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(ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

20. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in subclause (j).

(a) Definitions

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

(i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

(ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

(i) Paid personal leave is available to an employee, when they are absent:

(1) due to personal illness or injury; or

(2) for the purposes of caring for an immediate family or household member who is sick and requires the employee’s care and support or who requires care due to an unexpected emergency.

(ii) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

(iii) he shall not be entitled in any year (whether in the employment of one employer or of more) to personal leave credit in excess of two weeks of ordinary working time;

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

(c) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

(i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

(ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

he shall, within 48 hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

(f) Evidence Supporting Claim

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

(ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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(g) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (b)(iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal 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 personal leave prescribed in respect of that year.

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

(i) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(j) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

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21. PRESENTING FOR WORK AND NOT REQUIRED

(a) Except when notice is given to an employee by his employer or his responsible representative not to present himself for work, or through inclement weather and if an employee attends for such work and his services are not required, such employee shall be paid a minimum of four hours at the appropriate rate in addition to fares payable under Clause 9 - Allowances, subclause (b) - Allowance for Distant Jobs and Clause 28 - Travelling Time of this award. The employee shall be informed within 30 minutes of the usual starting time that his services are not required.

(b) An employee who is required to attend for work and is kept waiting to commence work by the instruction of the employer or his representative shall be paid at his ordinary rate of pay for the time he is kept so waiting.

22. REST PERIODS

(a) An employee who has worked continuously, except for the intervention or cessation for meals or crib-time as allowed by this award, for 20 hours, shall not be required to continue at or recommence work for at least 12 hours.

(b) There shall be allowed, without deduction of pay, a rest period of 10 minutes (from the time of ceasing work therefor until the time of resuming work) between the hours of 9.30am and 11.00am and a further rest period of 10 minutes (from the time of ceasing work therefor until the time of resuming work) between the hours of 2.30pm and 3.30pm.

(c) An employee working overtime shall be allowed a crib-time of 20 minutes without deduction of pay after each four hours of overtime worked if the employee continued to work after such crib-time.

Unless the period of overtime is less than two hours an employee before starting overtime after working ordinary hours shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates.

An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that in the event of any employee remaining at work after ceasing time without taking the crib-time of 20 minutes and continuing to work for a period of two hours, he shall be regarded as having worked two and a third hours since the said ceasing time and be paid accordingly.

An employee required to work overtime for two hours or more without being notified the previous day shall be paid a meal allowance of $9.25.

(d) Where shift-work comprises three continuous and consecutive shifts of eight hours each per day, a crib-time not exceeding 20 minutes in duration shall be allowed without deduction of pay in each shift, such crib-time being in lieu of any other rest period or cessation of work provided for or prescribed elsewhere by this award.

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(e) Where an employee has worked for two hours in a place in the shade where the temperature has been raised by artificial means to more than 54.4 degrees Celsius, he shall be allowed, without deduction from pay, a rest period of 20 minutes, and so also when he has worked any subsequent period of two hours in such a place.

(f) When an employee has worked for two hours in a place where the temperature has been lowered by artificial means to less than 0 degrees Celsius, he shall be allowed, without deduction of pay, a rest period of 20 minutes, and so also when he has worked any subsequent period of two hours in such a place.

(g) The provisions of subclauses (b), (c) and (d) of this clause shall not be applicable to the case of any employee who is allowed the rest periods prescribed by subclauses (e) and (f) of this clause.

23. RIGHT OF ENTRY

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

24. SAVING

Any employee who is at present in receipt of a wage rate in excess of that herein prescribed shall not have his wage rate reduced as a result of this award.

25. SERVICE INCREMENTS

(a) In addition to any other payment to which an employee other than a casual may be entitled under this award, an adult employee shall be entitled as follows to an additional payment according to the years of service he has completed in the industry. The amount payable shall in each case be regarded as part of the employee's ordinary rate of pay for all purposes:

	Per Week $
After completion of 1 year's service in the industry	3.50
After completion of 2 year's service in the industry	5.00
After completion of 3 year's service in the industry	6.60
After completion of 5 year's service in the industry	8.00
After completion of 10 year's service in the industry	16.20

(b) The onus shall be upon the employee to satisfy the employer that he has completed the number of years service in the industry which he claims.

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(c) For the purpose of this clause, 'service in the industry' shall mean service in Tasmania provided that where an employee commencing in the industry in Tasmania has worked in the industry in another State, service in that State shall count for purpose of service in Tasmania, subject to the production of evidence satisfactory to the employer of such service."

26. SPECIAL RATES AND PROTECTIVE CLOTHING

(a) Swing Scaffold

A payment of $3.44 for the first four hours or any portion thereof, and $0.69 for each hour thereafter on any day shall be made to any person employed:

(i) on any type of swing scaffold or any scaffold suspended by rope or cable, bosun's chair etc.;

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height of 6 metres or more above the nearest horizontal plane.

PROVIDED that an apprentice with less than two years experience shall not use a swing scaffold or bosun's chair.

PROVIDED FURTHER that solid plasterers when working off a swing scaffold shall receive an additional $0.11 per hour.

(b) Explosive Powered Tools

An operator of explosive powered tools, as defined in this award who is required to use an explosive powered tool, shall be paid $1.20 for each day on which he uses such a tool.

(c) Flexible Drive Polishing Machines

Operators of flexible drive polishing machines shall be supplied with aprons by the employer when requested, but no such employee shall be entitled to more than one apron in any one year.

(d) Heavy Blocks

The employer shall provide mechanical means for the handling, lifting and placing of heavy blocks, or pay in lieu thereof the following allowances to employees engaged on such work:

where the blocks weigh over 5.5kg and under 9kg	$0.46 per hour
where the blocks weigh 9 kg or over up to 18 kg	$0.81 per hour
where the blocks weigh over 18 kg	$1.18 per hour

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An employee shall not be required to lift a building block in excess of 20 kg in weight unless such employee is provided with a mechanical aid or with an assisting employee; provided than an employee shall not be required to manually lift any building block in excess of 20 kg in weight to a height of more than 4 feet (1.2m) above the working platform.

27. SUNDAY AND HOLIDAY WORK

(a) For all time of duty on Sundays, payment shall be made at the rate of double time.

(b) For all time of duty on any of the holidays mentioned in Clause 12 - Holidays with Pay, of this award, payment shall be made at the rate of double time and one half.

28. TERMINATION OF SERVICE

Employment shall be from day to day for the first fortnight and thereafter shall be terminable by one week's notice on either side or by the payment or forfeiture of one week's wages as the case may be but this shall not affect the right of the employer to dismiss an employee without notice for inefficiency, misconduct, or neglect of duty, in which case wages shall be paid up to the time of dismissal.

29. TRAVELLING TIME

(a) All time spent in travelling to distant jobs from the employer's workshop shall be paid for at the rate of ordinary time.

(b) Employees travelling to or from distant jobs shall be reimbursed all fares and expenses necessarily incurred.

P C Shelley
DEPUTY PRESIDENT

24 July 2007